



राजपत्र, हिमाचल प्रदेश

हिमाचल प्रदेश राज्य शासन द्वारा प्रकाशित

वीरवार, 18 जून, 2020/28 ज्येष्ठ, 1942

हिमाचल प्रदेश सरकार

LABOUR AND EMPLOYMENT DEPARTMENT

NOTIFICATION

Dharamshala, the 14th October, 2019

No. Shram (A) 6-2/2014 (Awards).—In exercise of the powers vested under section 17 (1) of the Industrial Disputes Act, 1947, the Governor, Himachal Pradesh is pleased to order the publication of awards of the following cases announced by the Presiding Officer, Labour Court

Dharamshala on the website of the Department of Labour & Employment Government of Himachal Pradesh:—

Sl. No.	Ref. No.	Petitioner	Respondent	Date of Award/Order
1.	136/16	Ramesh Kumar	E.E. HPPWD, Dharampur	01-07-2019
2.	161/14	Pritam Chand	Registrar CSK, HPKVV Palampur	01-07-2019
3.	211/14	Sanjay Kumar	Registrar CSK, HPKVV	01-07-2019
4.	184/14	Fango Ram	Registrar CSK, HPKVV	01-07-2019
5.	172/14	Vinay Kumar	Registrar CSK, HPKVV	01-07-2019
6.	179/14	Desh Raj	Registrar CSK, HPKVV	01-07-2019
7.	759/16	Shashi Bhushan	D.F.O. Palampur	01-07-2019
8.	721/16	Dinesh Kumar	D.F.O. Palampur	01-07-2019
9.	139/14	Pardeep Kumar	Registrar CSK, HPKVV Palampur	01-07-2019
10.	170/14	Veer Singh	Registrar CSK, HPKVV Palampur	01-07-2019
11.	150/14	Sunil Kumar	Registrar CSK, HPKVV Palampur	02-07-2019
12.	327/16	Nanak Chand	HPPWD, Sarkaghat & others	02-07-2019
13.	204/14	Simpal Sharma	Registrar CSK, HPKVV Palampur	03-07-2019
14.	213/14	Sunil Kumar	Registrar CSK, HPKVV Palampur	03-07-2019
15.	52/16	Ajay Sharma	S.D.O. Soil Conservator	03-07-2019
16.	733/16	Ganga Ram	Er-in-Chief HPPWD, Shimla & others	03-07-2019
17.	664/16	Ravi Kant	Er-in-Chief HPPWD, Shimla & others	03-07-2019
18.	209/14	Sanjeev Kumar	Registrar CSK, HPKVV, Palampur	04-07-2019
19.	778/16	Kantoh Ram	E.E.HPPWD, Nurpur & others	04-07-2019
20.	720/16	Dinesh Guleria	D.F.O. Palampur	05-07-2019
21.	164/17	Bimla Devi	D.F.O. Joginder Nagar	05-07-2019
22.	220/14	Shashi Mahinder	Registrar CSK, HPKVV Palampur	05-07-2019
23.	776/16	Chain Singh	E.E. HPPWD, Nurpur & others	05-07-2019
24.	200/14	Shashi Kumar	Registrar CSK, HPKVV Palampur	06-07-2019
25.	881/16	Roshan Deen	E.E. HPPWD, Nurpur & others	06-07-2019
26.	90/16	Chander Shekhar	HP State Forest Corporation S/Nagar	08-07-2019
27.	64/15	Gurbachan Singh	E.E. Changer Area Lift Irrigation	13-07-2019
28.	112/18	Vishal Verma	M.D. M/s Inox Wind Ltd.	13-07-2019
29.	109/18	Gopal	M.D. M/s Inox Wind Ltd.	13-07-2019
30.	111/18	Sikander Pal	M.D. M/s Inox Wind Ltd.	13-07-2019
31.	110/18	Amit Sharma	M.D. M/s Inox Wind Ltd.	13-07-2019
32.	651/16	Sunder Singh	M.D.DAV College Committee & other	13-07-2019
33.	203/17	Prem Dass Kaundal	M.D. M/S Divya Himachal	13-07-2019
34.	208/17	Prem Dass Kaundal	M.D. M/S Divya Himachal	13-07-2019
35.	884/16	Tilak Raj	E.E. HPPWD, Nurpur	15-07-2019
36.	128/17	Rohit Kumar	M.D. M/S Froza Innovation	17-07-2019
37.	129/17	Mohinder Singh	M.D. M/S Froza Innovation	17-07-2019
38.	130/17	Amarjeet	M.D. M/S Froza Innovation	17-07-2019
39.	180/14	Ravi Kumar	Registrar CSK, HPKVV Palampur	17-07-2019
40.	882/16	Subhash Singh	HPPWD, Nurpur	17-07-2019
41.	866/16	Babu Ram	HPPWD, Nurpur	17-07-2019

42.	899/16	Tuffail	HPPWD, Nurpur	17-07-2019
43.	83/15	Janki Dass	Dir. Rural Development	17-07-2019
44.	181/14	Avinash Kumar	Registrar CSK, HPKVV Palampur	18-07-2019
45.	879/16	Hanif	E.E. HPPWD, Nurpur	18-07-2019
46.	196/14	Dehro Devi	Registrar CSK, HPKVV Palampur	19-07-2019
47.	172/17	Sheela Devi	D.F.O. Joginder Nagar	19-07-2019
48.	188/14	Rajinder Kumar	Registrar CSK, HPKVV Palampur	20-07-2019
49.	170/17	Lata Devi	D.F.O. Joginder Nagar	20-07-2019
50.	176/17	Bhim Singh	D.F.O. Joginder Nagar	20-07-2019
51.	365/16	Dev Raj	M/D M/S Kwaliti Pharmaceuticals	22-07-2019
52.	350/14	Sanjay Kumar	M/D M/S Kwaliti Pharmaceuticals	22-07-2019
53.	677/16	Bikram Chand	D.F.O. Palampur	22-07-2019
54.	578/16	Babita Sharma	D.F.O. Palampur	22-07-2019
55.	562/16	Jan Mohammad	E.E.HPPWD, Nurpur & other	31-07-2019
56.	178/13	Janak Raj	M/S Him Cylinder	31-07-2019
57.	43/13	Praveen Kumar	M/S Him Cylinder	23-07-2019
58.	221/14	Rakesh Kumar	Registrar CSK, HPKVV	23-07-2019

By order,
NISHA SINGH, IAS,
Addl. Chief Secretary (Lab. & Emp.).

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 136/2016
Date of Institution : 17-03-2019
Date of Decision : 01-07-2019

Shri Ramesh Kumar s/o Sh. Mohan Lal r/o Vill. Putalifald, P.O.Mandap, Tehsil Sarkaghat,
District Mandi, H.P. (Dead) ..Petitioner.

Versus

The Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.
For the Respondent : Sh. Bhisham Chand, D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

“Whether alleged termination of services of Sh. Ramesh Kumar s/o Sh. Mohan Lal r/o Vill.

Putalifald, P.O. Mandap, Tehsil Sarkaghat, Distt. Mandi, H.P. from March, 1999, by the Executive Engineer, H.P.P.W.D. Division Dharampur, District Mandi, H.P. who had worked as beldar on daily wages basis during the year 11/1998 to 3/1999, respectively and has raised his industrial dispute *vide* demand notice dated 28-07-2014 after more than 15 years, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of working period during the year 11/1998 to 03/1999 and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. During the pendency of the case, the petitioner, namely, Shri Ramesh Kumar had expired. An application under Order 22, Rules 3 & 9 read with Section 151 Code of Civil Procedure was filed for bringing on record the legal representatives of deceased petitioner Shri Ramesh Kumar. Issues were struck on this application on 4-12-2018 and the case stood listed for evidence of the applicants for today. But, however, neither the applicants nor their counsel had put in appearance before this Tribunal despite the case being called several times since morning. Hence, despite due knowledge, the applicants had remained *ex parte*.

3. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

4. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference *ex-parte* and decide the reference application in the absence of the defaulting party.”

5. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

6. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed *ex-parte*.- If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

7. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, infact, it is not true, and thus make an *ex-parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, he is unwilling to adduce evidence or argue his case.

8. In the instant case, neither the applicants nor their counsel has put in appearance before this Tribunal today. In these circumstances, the Tribunal can proceed and pass *ex parte order/award* on its merits.

9. As per the application, it was required of the applicants to plead and prove on record that there were sufficient ground to condone the delay in filing the application under Order 22, Rules 3 & 9 read with Section 151 Code of Civil Procedure for bringing on record the legal representatives of deceased petitioner, namely, Shri Ramesh Kumar. However, no evidence to this effect was led on record by the applicants. At the risk of repetition, the applicants had not put in appearance before this Tribunal. In this view of the matter, the delay in filing the application for bringing on record the legal representatives of deceased petitioner cannot be condoned. Accordingly, the application under Order 22, Rules 3 & 9 read with Section 151 Code of Civil Procedure deserves dismissal and is accordingly dismissed. The reference stands accordingly abated. Even otherwise, it was required to be pleaded and proved on record that the termination of the services of deceased petitioner from March, 1999 by the respondent was without complying with the provisions of the Industrial Disputes Act, 1947, and thus, illegal and unjustified. There is neither any pleading nor any evidence to this effect on record on the part of the applicants. They, as discussed above had failed to put in appearance before this Tribunal. So, this reference is also answered in the negative. Parties to bear their own costs.

10. The reference is answered in the aforesaid terms.

11. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 161/2014
Date of Institution	: 17-4-2014
Date of Decision	: 01-7-2019

Shri Pritam Chand s/o Shri Jolli Ram, r/o Vilalge Ambari, P.O. Malan, Tehsil & District

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidayalya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication: —

“Whether termination of the services of Sh. Pritam Chand s/o Sh. Jolli Ram, r/o Village-Ambari, P.O. Malan, Tehsil & District Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Rice & Wheat department *w.e.f.* the year 2001 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice & Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice & Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2001 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched

workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice & Wheat department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during the year 2002, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no

wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done through some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor himself prior to March, 2010. He raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01-8-2015:—

- (1) Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.

- (4) Whether the petitioner has no locus standi to file the case as alleged? ..OPR.
- (5) Whether the petitioner has no cause of action to file the present case as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pritam Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of certificate dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of letter dated 13-11-1998 as Ex. PW1/D, copy of letter dated 17-2-1999 as Ex. PW1/E, copy of letter dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 4-4-2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J, copy of office order dated 19-7-2010 as Ex. PW1/K, and copy of Seniority list as Ex. PW1/L. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of notification dated 13-11-1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D to Ex. RW1/E, copy of letter dated 8-7-1998 as Ex. RW1/F, copy of letter dated 17-2-1999 as Ex. RW1/G, copy of notification dated 26-4-1999 as Ex. RW1/H, copy of details of the petitioner as Ex. RW1/I, copies of contingent bills/payment receipts as Ex. RW1/J to Ex. RW1/Z12, copy of Award as Ex. RW1/Z13, copy of order dated 20-3-2014 as Ex. RW1/Z14, copies of registration certificates as Ex. RW1/Z15 to Ex. RW1/Z19, copies of Agreement deeds as Ex. RW1/Z20 to Ex. RW1/Z25.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Pritam Chand examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/L.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of certificate dated 5-7-2010 relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

19. Ex. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

20. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

21. Ex. PW1/K is the copy of office order dated 19-7-2010 issued by the Registrar, CSK, HPKV, Palampur.

22. Ex. PW1/L is the seniority list of the Daily waged workers in the CSK HPKV as on 31-3-2008.

23. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2001. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2001 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

25. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

26. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

29. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31-3-2008.

30. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

31. Ex. RW1/G is the copy of office order dated 17-2-1999 issued by the Comptroller, HPKV, Palampur.

32. Ex. RW1/H is the copy of notification dated 26-4-1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/I is the copy of working detail of the petitioner.

34. Ex. RW1/J to Ex. RW1/Z12 are the copies of bills/contingent bills relating to the petitioner.

35. Ex. RW1/Z13 is the copy of Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

36. Ex. RW1/ Z14 is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

37. Ex. RW1/ Z15 is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

38. Ex. RW1/ Z16 is the copy of certificate of registration dated 27-7-2011 pertaining to M/s Sun Security Service.

39. Ex. RW1/ Z17 is the copy of application for registration of establishments employing contract labour issued by Labour Officer-*cum*-Registering Officer, Dharamshala.

40. Ex. RW1/ Z18 is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

41. Ex. RW1/ Z19 is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-*cum*-Registering Officer, Dharamshala.

42. Ex. RW1/ Z20 is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

43. Ex. RW1/ Z21 is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

44. Ex. RW1/Z22 is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/Z23 is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/Z24 is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. RW1/Z25 is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Maktg. Soc. Ltd. Vs. State of Tamil Nadu, (2004) 3 SCC 514*, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

49. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis and had raised the bills, payment of which had been made to him at the rate not below the Government rates. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner

to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked from the year 2002 uptil the year 2005 on work individual contract basis and thereafter, from the year 2006 uptil the year 2009 as an unregistered contractor himself. Later on, as per this document, he is shown to have refused to work under a registered contractor for the year 2010 and had only worked for the year 2011 through a registered contractor. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/L of daily waged workers in the university, as it stood on 31-3-2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/J to Ex. RW1/Z12, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

50. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2001 uptil March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has

been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

51. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172.*** I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

52. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165,*** where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

53. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974,*** wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509,*** wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

54. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

55. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the

petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief:

56. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial
Tribunal, Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 211/2014
Date of Institution : 05-5-2014
Date of Decision : 01-7-2019

Shri Sanjay Kumar s/o Shri Kishori Lal, r/o Village Gadiyara, P.O. Bhawarana, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, adv.
For the Respondent : Smt. Rajni Katoch, adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication: —

“Whether termination of the services of Shri Sanjay Kumar s/o Shri Kishori Lal, r/o Village Gadiyara, P.O. Bhawarana, Tehsil Palampur, District Kangra, H.P. by the Vice-Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service

benefits and compensation the above worker is entitled to from the above employer(s)/University?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry department *w.e.f.* the year 2004 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2004 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was

marked by the Field Assistant of Agroforestry department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayata Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus *standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during March, 2005, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had himself worked as a contractor and had raised various bills. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of

the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Be it recorded here that inadvertently before the framing of issues, evidence for the parties stood recorded by the learned predecessor-in-office of mine. This fact only came to the notice, while dictating the Award.

6. Consequently, out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 15-6-2019:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no *locus standi* to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

7. No fresh evidence was sought to be led, either by the petitioner or by the respondent on the issues framed on 15-6-2019. It was stated at bar by the learned counsel appearing for the parties

that evidence already adduced by the parties be read in the case.

8. The petitioner, namely, Shri Sanjay Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F1, copy of award dated 30-6-2014 as Ex. RW1/G, copy of order dated 20-3-2014 as Ex. RW1/H, copy of letter dated 29-1-2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/L, copy of contract license dated 16-7-2014 as Ex. RW1/M, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark -X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/T,

9. Arguments of the learned vice counsel for the petitioner and learned counsel for the respondent heard and records gone through.

10. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

11. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

12. The petitioner, namely, Shri Sanjay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-4 (now as Ex. RW1/D & Ex. RW1/F1). He is working in the department on contingency. He denied that he is making a phoney statement.

13. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

14. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

15. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

16. Ex. PW1/D is the copy of notification dated 13.11.1998 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/E is the copy of office order dated 17.2.1999 issued by Comptroller, HPKV, Palampur.

18. Ex. PW1/F is the copy of notification dated 26.4.1999 issued by Comptroller, HPKV, Palampur.

19. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

20. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

21. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

22. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

23. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

24. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

25. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur,

Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2004. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

26. Ex. RW1/B is the copy of office order dated 27-1-2017 issued by the Registrar, CSK HPKV Palampur.

27. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

28. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

29. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

30. Ex. RW1/D to Ex. RW1/F1 are the copies of contingent bill relating to the petitioner and others.

31. Ex. RW1/G is the copy of the Award dated 30-6-2014 passed in Reference No. 124/2011 by this Court.

32. Ex. RW1/H is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

33. Ex. RW1/I is the copy of letter dated 29-1-2011 regarding registration of establishment.

34. Ex. RW1/J is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

35. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

36. Ex. RW1/L is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

37. Ex. RW1/M is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between

the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

39. Ex. RW1/O is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

40. Ex. RW1/P is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/Q is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

43. Ex. RW1/S is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

45. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

46. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

47. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

48. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the

day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F1. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/F1, nowhere reflect that the petitioner was a daily paid worker. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2004 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

49. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2005 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

50. In all fairness, the learned counsel for the petitioner has placed reliance upon cases titled as ***Central Bank of India Vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal***

Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned counsel for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

51. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited Vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram Vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

52. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union Vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. Vs. Association of Engineering Workers , 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

53. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9 :

54. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

55. Not pressed.

Relief:

56. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 184/2014
Date of Institution : 02-5-2014
Date of Decision : 01-7-2019

Shri Fango Ram s/o Shri Purshotam Lal, r/o Village and P.O. Malan, Tehsil and District Kangra, H.P. *..Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Fango Ram s/o Shri Purshotam Lal, r/o Village and P.O. Malan, Tehsil and District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim

that his services were engaged by the respondent as a daily waged worker on daily rated basis in Rice and Wheat department *w.e.f.* the year 1996 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice and Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice and Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No.207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-*cum*-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice and Wheat department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on

contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during August, 2003, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had himself worked as a contractor and had raised various bills. The head of department had not violated any provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had raised the bills as a contractor. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No.207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid

from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no *locus standi* to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Fango Ram appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statues of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Anurag

Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copy of certificate of registration as Ex. PW2/A and copies of licenses of M/s Sun Security & M/s New Vision Security as Ex. PW2/B and Ex. PW2/C respectively. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D1 to Ex. RW1/D3, copy of award dated 30-6-2014 as Ex. RW1/E, copy of order dated 20-3-2014 as Ex. RW1/F, copy of letter dated 29-1-2011 as Ex. RW1/G, copy of license of M/s Sahayta Security as Ex. RW1/H, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/I, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark -X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/P, copy of registration certificate dated 11-7-2014 as Ex. RW1/Q and copy of license of M/s Sahayta Security services Ex. RW1/R.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Fango Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wageer. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was

also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA (now as Ex. RW1/D1 to Ex. RW1/D3). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of registration certificate of CSKHPKVV Palampur as Ex.PW2/A and copies of licenses of M/s Sun Security and M/s. New Vision as Ex.PW2/B and Ex. PW2/C respectively.

In the cross-examination, he admitted that the university is an educational institute. He feigned ignorance that research work is conducted in the university. Ex. PW2/A was issued for work in the Research Project in Agriculture Field Operations.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B to Ex. PW2/C are the copies of licenses dated 2-9-2011 and 21-8-2012 pertaining to M/s Sun Security Service and M/s Nuvision Commercial & Escorts services.

23. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKVV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1996. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter

stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1996 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D1 to Ex. RW1/D3 are the copies of contingent bill relating to the petitioner.
29. Ex. RW1/E is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/F is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/G is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/H is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security Services.

34. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/K is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/L is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 31-3-2015 executed between CSK,

HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

41. Ex. RW1/Q is the copy of certificate of registration dated 11-7-2014 relating to M/s Nu Vision Commercial and Escorts Services.

42. Ex. RW1/R is the copy of licence dated 5-8-2006 relating to M/s Sahyata Security.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D1 to Ex. RW1/D3. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur, which defines the term "employees", excludes

part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D1 to Ex. RW1/D3, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1996 upto April, 2010, without any breaks. No such record has been seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer Vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F.***

Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief :

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref. No. : 172/2014
 Date of Institution : 17-4-2014
 Date of Decision : 01-7-2019

Shri Vinay Kumar s/o Shri Tek Chand, r/o V.P.O. Pahra, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Vinay Kumar, s/o Shri Tek Chand, r/o V.P.O. Pahara, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya (C.S.K.H.P.K.V.) Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Seed Production department *w.e.f.* July, 2001 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Seed Production department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Seed Production department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the

respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2001 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Seed Production department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of

maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during August, 2002, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done through some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on work contract basis from August, 2002 upto March, 2010. He raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per requirement of the project works. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination

and adjudication by this Court *vide* order dated 01-8-2015: —

- (1) Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the petitioner has no *locus standi* to file the case as alleged? ..*OPR*.
- (5) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR*.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Vinay Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 8-7-1998 as Ex. PW1/B, copy of notification dated 13-11-1998 as Ex. PW1/C, copy of letter dated 17-2-1999 as Ex. PW1/D, copy of letter dated 26-4-1999 as Ex. PW1/E, copy of letter dated 4-9-1986 as Ex. PW1/F, copy of statue as Ex. PW1/G, copy of proceeding dated 4-4-2009 as Ex. PW1/H, copy of Agreement as Ex. PW1/I, copy of office order dated 19-7-2010 as Ex. PW1/J, and copy of Seniority list as Ex. PW1/K. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKVV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of notification dated 13-11-1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D to Ex. RW1/E, copy of letter dated 8-7-1998 as Ex. RW1/F, copy of letter dated 17-2-1999 as Ex. RW1/G, copy of notification dated 26-4-1999 as Ex. RW1/H, copy of details of the petitioner as Ex. RW1/I, copies of contingent bills/payment receipts as Ex. RW1/J to Ex. RW1/W, copy of Award as Ex. RW1/X, copy of order dated 20-3-2014 as Ex. RW1/Y, copies of registration certificates as Ex. RW1/Z to Ex. RW1/Z4, copies of Agreement deeds as Ex. RW1/Z5 to Ex. RW1/Z10.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No .1 and 2 :

9. Both these issues are intrinsically connected with each other and required common

appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Vinay Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

13. Ex. PW1/C is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

14. Ex. PW1/D is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

17. Ex. PW1/G is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

18. Ex. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between

the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex.PW1/J is the copy of office order dated 19-7-2010 issued by the Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the seniority list of the Daily waged workers in the CSK HPKV as on 31-3-2008.

22. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2001. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2001 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

23. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

24. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

25. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

26. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

27. Ex. RW1/D is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

28. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31-3-2008.

29. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development—Economy instructions which corresponds to Ex. PW1/B.

30. Ex. RW1/G is the copy of office order dated 17-2-1999 issued by the Comptroller, HPKV, Palampur.

31. Ex. RW1/H is the copy of notification dated 26-4-1999 issued by the Comptroller,

HPKV, Palampur.

32. Ex.RW1/I is the copy of working detail of the petitioner.
33. Ex.RW1/J to Ex.RW1/W are the copies of bills/contingent bills relating to the petitioner.
34. Ex.RW1/X is the copy of Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.
35. Ex.RW1/Y is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.
36. Ex. RW1/Z is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.
37. Ex. RW1/Z1 is the copy of certificate of registration dated 27-7-2011 pertaining to M/s Sun Security Service.
38. Ex. RW1/ Z2 is the copy of application for registration of establishments employing contract labour issued by Labour Officer-*cum*-Registering Officer, Dharamshala.
39. Ex. RW1/ Z3 is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.
40. Ex. RW1/ Z4 is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-*cum*-Registering Officer, Dharamshala.
41. Ex. RW1/ Z5 is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.
42. Ex. RW1/ Z6 is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.
43. Ex. RW1/Z7 is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
44. Ex. RW1/Z8 is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
45. Ex. RW1/Z9 is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
46. Ex. RW1/Z10 is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.
47. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is

denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

48. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis and had raised the bills, payment of which had been made to him at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked from August, 2002 uptil the year 2006 on work individual contract basis and thereafter, from the year 2007 uptil August, 2010 as an unregistered contractor himself. Later on, as per this document he is shown to have refused to work under a registered contractor in the year 2010 but, however, in the year 2011 he had worked through a registered contractor. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/K of daily waged workers in the university, as it stood on 31.3.2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/J to Ex. RW1/W, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/B. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/C, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/D, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

49. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2001 uptil March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the

seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

50. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

51. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

52. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

53. In view of the ocular and documentary evidence, as discussed above, it can safely be

concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

54. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

55. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 179/2014
Date of Institution : 02-5-2014
Date of Decision : 01-7-2019

Shri Desh Raj s/o Shri Harbans Lal, r/o Village Molichak, P.O. Salyana, Tehsil Palampur,
District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav
Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Desh Raj s/o Shri Harbans Lal, r/o Village Molichak, P.O. Salyana, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhery Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Horticulture & Plant Breeding department *w.e.f.* the year 2000 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Horticulture & Plant Breeding department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Horticulture & Plant Breeding department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the

respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Horticulture & Plant Breeding department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis in March, 2003, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done

from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on contract basis from March, 2003 upto July, 2006 and thereafter he had worked as an unregistered contractor. He had raised bills from the month of November, 2006 upto June, 2009. The head of department had not violated any provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had raised the bills as a contractor. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various *ad hoc* projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub-head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no *locus standi* to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*

(7) Whether the petitioner has no cause of action to file the present case as alleged?

..OPR.

(8) Whether the petitioner has not approached the Court with clean hands as alleged?

..OPR.

(9) Whether the petitioner has suppressed the true and material facts from the Court as alleged?

..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Desh Raj appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copy of certificate of registration as Ex. PW2/A and copies of licenses of M/s Sun Security & M/s New Vision Security as Ex. PW2/B and Ex. PW2/C respectively. The respondent examined one Shri Dinesh Kumar Vatsa as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copy of bill voucher as Ex. RW1/D, copy of award dated 30-6-2014 as Ex. RW1/E, copy of order dated 20-3-2014 as Ex. RW1/F, copy of letter dated 29-1-2011 as Ex. RW1/G, copy of license of Sahayta Security as Ex. RW1/H, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/I, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/J to Ex. RW1/O, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/P and copy of registration certificate dated 11-7-2014 as Ex. RW1/Q.

7. Arguments of the Learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common

appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Desh Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be engaged in the department. Volunteered that, no appointment letter was issued to them. He admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA (04 pages) (now as Ex. RW1/D). He also admitted that as per the bill voucher he had received the payments. He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Anurag Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copy of registration certificate of CSKHPKVV Palampur as Ex. PW2/A and copies of licenses of M/s Sun Security and M/s. New Vision as Ex. PW2/B and Ex. PW2/C respectively.

In the cross-examination, he admitted that the university is an educational institute. He feigned ignorance that research work is conducted in the university. Ex. PW2/A was issued for work in the Research Project in Agriculture Field Operations.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B to Ex.PW2/C are the copies of licenses dated 2-9-2011 and 21-8-2012 pertaining to M/s Sun Security Service and M/s Nuvision Commercial & Escorts services.

23. Conversely, Shri Dinesh Kumar Vatsa, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2000 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex.RW1/D3 are the copies of contingent bill relating to the petitioner.

29. Ex. RW1/E is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/F is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/G is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/H is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/I is the copy of certificate of registration relating to M/s. Sun Security

Services.

34. Ex. RW1/J is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

35. Ex. RW1/K is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

36. Ex. RW1/L is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

37. Ex. RW1/M is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

38. Ex. RW1/N is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/O is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/P is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

41. Ex. RW1/Q is the copy of certificate of registration dated 11-7-2014 relating to M/s Nu Vision Commercial and Escorts Services.

42. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

43. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

44. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

45. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex. R-2. These documents are not in dispute

by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/D3. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/D3, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

46. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2000 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is

negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

47. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

48. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

49. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

50. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue No. 3 is decided accordingly.

Issues No. 4, 6 to 9 :

51. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the

petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

52. Not pressed.

Relief:

53. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 759/2016
Date of Institution : 18-11-2016
Date of Decision : 01-07-2019

Shri Shashi Bhushan s/o Shri Beni Parsad, r/o Village Marh (Kudail Upper), P.O. Chobin, Tehsil Baijnath, District Kangra, H.P. *..Petitioner.*

Versus

1. The Principal Chief Conservator of Forest, Himachal Pradesh, Shimla-1.
2. The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Shashi Bhushan s/o Sh. Beni Parsad r/o

Village Marh (Kudail Upper), P.O. Chobin, Tehsil Baijnath, Distt. Kangra, H.P. from 1-1-2007, by (1) the Principal Chief Conservator of Forests, Himachal Pradesh, Shimla-171001 and (2) the Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis during 1996 to 31-12-2006 and has raised his industrial dispute *vide* demand notice dated 11-5-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?"

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged on daily waged basis on muster roll by the respondents *w.e.f.* February, 1996, without any appointment order and settlement of terms and conditions. On the verbal orders, he was deputed by the respondents to work with Indo-German Changer Project, Palampur (IGCP). Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. He had worked continuously with the respondents without any breaks upto 31-03-2006 and had completed 240 days in each calendar year. During the period from the year 1987 upto 31-3-2006, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondents/department on 31-3-2006, with prior notice. On his asking, he was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31-3-2006 and that his services were no more required by the department in future. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondents had violated the principle of 'last come first go' as envisaged under Section 25-G of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections regarding lack of maintainability, that petition was bad on account of delay and laches and for non-joinder of necessary parties. The contents of the petition were denied on merits. It is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wage/contractual during the year 2003 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondents are not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondents, the question of adjusting other workers by the respondents does not arise. No verbal assurance had ever been given by the respondents to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondents also did not arise. The petitioner is working as an agriculturist and is gainfully employed. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. 'Out of the pleadings of the parties, the following issues were settled for determination

and adjudication by this Court vide order dated 18-10-2017:—

- (1) Whether termination of the services of petitioner by the respondents *w.e.f.* 01-01-2007 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Shashi Bhushan appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21-12-2004, 1-1-2009, 15-12-2009, 3-12-2009, 15-2-2006, 29-4-2009, 17-11-2008, 2-1-2014 & 21-9-1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K and copies of RTI information dated 4-1-2011, 22-9-2011 & 18-9-2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1-12-2009 as Ex. PW1/N, copy of order dated 28-2-2013 as Ex. PW1/O, copy of RTI information dated 1-1-2014 as Ex. PW1/P, copy of order dated 2-12-2008 as Ex. PW1/Q, copy of RTI dated 14-8-2014 as Ex. PW1/R, copy of reply to the demand notice as Ex. PW1/S and copy of staff engaged as on 3-12-2009 as Ex. PW1/T. The respondents examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A and copy of list of contractual staff as Ex. RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: No
Issue No. 5	: Not pressed
Relief.	: Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Shashi Bhushan (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath

the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in the project, but had worked in the forest department. He denied that he was engaged *w.e.f.* 1-2-2003 in the said project. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He also showed his ignorance that the project was a German aided project. He was also not aware that the forest department had no concern with the project. He denied that he was kept on temporary basis in the project. He denied that he had neither been kept nor removed from work by the forest department. He denied that from the year 2006 upto the year 2015, he had not raised the dispute. He admitted that he had raised the demand notice in May, 2015. He categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates. He denied that a false claim has been filed just to take undue benefit.

11. Ex. PW1/B is the copy of letter dated 21-12-2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

12. Ex. PW1/C is the copy of letter dated 1-1-2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

13. Ex. PW1/D is the copy of letter dated 15-12-2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

14. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/H.P. MHWDP.

15. Ex. PW1/F is the copy of letter dated 15-2-2006 regarding closure of Indo-German Changer Project Palampur

16. Ex. PW1/G is the copy of letter dated 29-4-2009 regarding appointment of daily waged drivers- Information under RTI thereof.

17. Ex. PW1/H is the copy of letter dated 17-11-2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

18. Ex. PW1/I is the copy of letter dated 2-1-2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

19. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

20. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

21. Ex. PW1/M is the copy of letter dated 22-9-2014 regarding information of filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

22. Ex. PW1/N is the copy of judgment dated 1-12-2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

23. Ex. PW1/O is the copy of judgment dated 28-2-2013 passed by the learned Additional

24. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

25. Ex. PW1/Q is the copy of Award dated 2-12-2008 passed in Reference No.117/2007 by this Court.

26. Ex. PW1/R is the copy of letter dated 14-8-2014 regarding information of filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

27. Ex. PW1/S is the copy of reply to the demand notice.

28. Ex. PW1/S is the copy of staff engaged after 3-12-2009.

28. Conversely, Shri B.S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster roll. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that the Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto the year 2006, the petitioner had continuously worked for more than 240 days. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was also admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. He further admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

29. Ex. RW1/B is the copy of list of contractual staff of defunct Indo-German Eco-Development project, Palampur. It depicts the name of the petitioner at serial no.20 and that he had worked on contractual basis for different spells from 15-1-2003 to 31-12-2006.

30. It is claimed by the petitioner in the statement of claim that his services were engaged as a daily wager on muster roll basis *w.e.f.* February, 1996 by the respondents/department and had worked as such upto 31-3-2006. The respondents denied this fact. Placed on record by the respondents is a list of contractual staff of defunct Indo-German Eco-Development Project, Palampur, as Ex. RW1/B. Its perusal discloses that the petitioner had worked as Community

Mobilizer in the aforesaid project on contractual basis for different spells *w.e.f.* 01-2-2003 and had worked as such upto 31-12-2006. Since, the petitioner had worked in the project even after April, 2006, the question of final termination of his service by the respondents (as per the statement of claim) does not arise. Rather, the same has become insignificant.

31. Even otherwise, Section 10(4) of the Act mandates that the Labour Court/Industrial Tribunal shall confine its adjudication to the points of dispute referred to it by the appropriate Government and the matters incidental thereto. No reference has been received from the appropriate Government regarding the alleged final termination of the services of the petitioner by the respondent in April, 1996, as claimed in the statement of claim and the ocular evidence led on record by the petitioner. Therefore, the said controversy, if any, between the parties cannot be looked into by this Court, being beyond the terms of the reference.

32. Next, it was asserted by the petitioner that he was a workman of the respondents, being appointed on daily waged basis. The respondents denied this fact. Therefore, the onus lay on the petitioner to prove such fact. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondents. Had it been that the petitioner was a daily paid worker of the respondents, he ought to have been engaged on the muster rolls. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. This only goes to show that he had never been engaged on the muster roll. Then, no seniority list of daily waged workers maintained by the respondents, reflecting his name, has been placed and exhibited on record by the petitioner. Rather, as discussed above, per the list of contractual staff of defunct Indo-German Eco-Development Project, Palampur, Ex. RW1/B, the petitioner had worked as a Community Mobilizer in the project for specified periods on contract basis. Lastly, from 1-10-2006 to 31-12-2006, he had worked on contract basis. Admittedly, the period of contractual appointment of the petitioner came to an end on 31-12-2006. Thereafter, the contractual employment of the petitioner was not renewed by the employer, since as per the version of the respondents the Indo-German Changer Project stood closed.

33. In view of the document Ex.RW1/B, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services had been engaged by the respondents on daily wage basis. It is the basic law that non renewal of the term of the contractual appointment does not fall within the mischief of the word 'retrenchment' as defined in the Act as per clause (bb) of Section 2(oo) of the Act. For these reasons, neither the claim petition is maintainable nor it can be concluded that the respondents have flouted any of the provisions of the Act.

34. Be it stated that the services of the petitioner were not terminated by the respondents as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from time to time *w.e.f.* 01-2-2003 upto 31-12-2006 came to end with the efflux of time.

35. Such being the situation and taking into account the observations made in cases titled as *State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81*, it is held that the petitioner has no *locus standi* to sue.

36. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. No relief can be granted to him.

37. Both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

38. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No.4 :

39. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that: —

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

40. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 5:

41. Not pressed.

Relief:

42. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 721/2016
Date of Institution	: 06-10-2016
Date of Decision	: 01-07-2019

Shri Dinesh Kumar s/o Shri Rattan Lal Rana, r/o Village Kuhana, P.O. Dheera, Tehsil

Palampur, District Kangra, H.P.

..Petitioner.

Versus

The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

“Whether alleged termination of services of Sh. Dinesh Rana s/o Sh. Rattan Lal Rana r/o Village Kuhana, P.O. Dheera, Tehsil Palampur, District Kangra H.P. *w.e.f.* 1-1-2007 by (1) the Principal Chief Conservator of Forest H.P. Shimla-1 (2) the Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis 13-12-2001, to 31-12-2006 and has raised his industrial dispute *vide* demand notice dated 7-5-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged on daily waged basis on muster roll by the respondent *w.e.f.* 13-12-2001 and had worked under the respondent in IGCP Palampur upto 31-12-2006. Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. He had worked continuously with the respondent without any breaks upto 31-12-2006 and had completed 240 days in each calendar year. During the period from the year 2001 upto 31-12-2006, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondent/department on 1-1-2007, without notice. On his asking, he was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31-3-2006 and that his services were no more required by the department in future. Alongwith him 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondent had violated the principle of ‘last come first go’ as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand, Anup Chauhan and Ajay Katoch, who all were junior to the petitioner, had worked with the respondent as such upto 31-12-2006. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that petition was bad on account of delay and laches and for non-joinder of necessary parties. The contents of the petitioner were denied by the respondent on merits.

It is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wager/contractual during June, 2003 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondent is not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondent, the question of adjusting other workers by the respondent does not arise. No verbal assurance had ever been given by the respondent to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondent also did not arise. The petitioner is working as an agriculturist and is gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18-10-2017: —

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 01-01-2007 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? ..*OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dinesh Rana appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21-12-2004, 1-1-2009, 15-12-2009, 3-12-2009, 15-2-2006, 29-2-2004, 17-11-2008, 2-1-2014 & 21-9-1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K, copies of RTI information dated 4-1-2011, 22-9-2011 & 18-9-2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1-12-2009 as Ex. PW1/N, copy of order dated 28-2-2013 as Ex. PW1/O, copy of RTI information dated 1-1-2014 as Ex. PW1/P, copy of order dated 2-12-2008 as Ex. PW1/Q and copy of RTI dated 14-8-2014 as Ex. PW1/R. The respondent examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of list of contractual staff as Ex. RW1/B and copy of agreement as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : Negative

Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Issue No.5	: Not pressed
Relief.	: Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Dinesh Rana (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in the project, but had worked in the forest department. He denied that he was engaged *w.e.f.* 12-6-2003 in the said project. Volunteered that, he was kept at work in the year 2001. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He denied that he had worked on contract basis after the month of March, 2006. He also showed his ignorance that the project was a German aided project. He was also not aware that the forest department had no concern with the project. He denied that he was kept on temporary basis in the project. He denied that he had neither been kept nor removed from work by the forest department. He denied that from the year 2007 upto the year 2015, he had not raised the dispute. He admitted that he had raised the demand notice in May, 2015. He categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates. He denied that a false claim has been filed just to take undue benefit.

11. Ex. PW1/B is the copy of letter dated 21.12.2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

12. Ex. PW1/C is the copy of letter dated 1-1-2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

13. Ex. PW1/D is the copy of letter dated 15-12-2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/H.P. MHWDP.

14. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

15. Ex. PW1/F is the copy of letter dated 15-2-2006 regarding closure of Indo-German Changer Project Palampur.

16. Ex. PW1/G is the copy of letter dated 29-4-2009 regarding appointment of daily waged drivers- Information under RTI thereof.

17. Ex. PW1/H is the copy of letter dated 17-11-2008 regarding re-engagement of daily

waged workers of Indo-German Changer Project Palampur.

18. Ex. PW1/I is the copy of letter dated 2-1-2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

19. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

20. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

21. Ex. PW1/M is the copy of letter dated 22-9-2014 regarding information of filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

22. Ex. PW1/N is the copy of judgment dated 1-12-2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

23. Ex. PW1/O is the copy of judgment dated 28-2-2013 passed by the learned Additional District Judge-II, Kangra at Dhramshala in Civil Appeal No.271-P/2010.

24. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

25. Ex. PW1/Q is the copy of Award dated 2-12-2008 passed in Reference No.117/2007 by this Court.

26. Ex. PW1/R is the copy of letter dated 14-8-2014, being information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

27. Conversely, Shri B.S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster roll. Self stated that, he was kept on agreement. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by the Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto 31-12-2006, the petitioner had continuously worked for more than 240 days. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was also admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was further admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging

the Award in favour of Shri Bishan Dass was dismissed. Further, he admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

28. Ex. RW1/B is the copy of list of contractual staff of defunct Indo-German Eco-Development project, Palampur. It depicts the name of the petitioner at serial No.4 and that he had worked on contractual basis for different spells from 27-5-2003 to 31-12-2006.

29. Ex.RW1/C is the copy of Agreement dated 6th December, 2006 executed between the Member Secretary Himachal Pradesh Eco-Development Society, Palampur and Shri Dinesh Rana (petitioner).

30. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily wage basis. The respondent denied this fact. Therefore, the onus lay on the petitioner to prove such fact. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. This only goes to show that he had never been engaged on the muster roll. Then, no seniority list of daily waged workers maintained by the respondent, reflecting his name, has been placed and exhibited on record by the petitioner. Rather, the respondent has tendered in evidence list of contractual staff of defunct Indo-German Eco-Development Project, Palampur as Ex. RW1/B. It reflects the name of the petitioner at serial no.3. It shows that he had worked as a Panchayat Micro Plan Facilitator in the project for specified periods on contract basis. Lastly, from 12-06-2003 to 31-12-2006, he had worked on contract basis. Placed on record by the respondent is also a copy of agreement, Ex.RW1/C entered into between the petitioner and the Member Secretary, Himachal Pradesh Eco-Development Society, Palampur. As per this agreement the petitioner was to serve the employer for a specified period of three months *w.e.f.* 1-10-2006 upto 31-12-2006. Admittedly, the period of contractual appointment of the petitioner came to an end on 31-12-2006. Thereafter, the contractual employment of the petitioner was not renewed by the employer, since as per the version of the respondent the Indo-German Changer Project stood closed.

31. Clauses 6 & 7 of the Agreement Ex. Ex.RW1/C postulate as under:—

“6. The employment is on purely contract basis and the employee shall not claim for regularization in the organization of employer or any other concern of the central or state govt. at any time.

7. This agreement shall come to an end even before the period of this agreement in the event of the termination of the project or/and termination of the specific work given to the employee by the competent authority and in such eventuality, it shall be presumed that the employer has relieved the employee from his service with one calendar month's notice”.

32. In view of the documents Ex.RW1/B and Ex.RW1/C, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services had been engaged by the respondent on daily wage basis. It is the basic law that non renewal of the term of the contractual appointment does not fall within the mischief of the word ‘retrenchment’ as defined

in the Act as per clause (bb) of Section 2(oo) of the Act. For these reasons, neither the claim petition is maintainable nor it can be concluded that the respondent has flouted any of the provisions of the Act.

33. Be it stated that the services of the petitioner were not terminated by the respondent as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from time to time *w.e.f.* 12-06-2003 upto 31-12-2006 came to end with the efflux of time.

34. Such being the situation and taking into account the observations made in cases titled as ***State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81***, it is held that the petitioner has no locus standi to sue.

35. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. No relief can be granted to him.

36. Both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

38. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that: "The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

39. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5:

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on

issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 139/2014
Date of Institution : 05-4-2014
Date of Decision : 01-7-2019

Shri Pardeep Kumar s/o Shri Pritam Chand, r/o Village, Molichak, P.O. Saliyana, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Pardeep Kumar s/o Sh. Pritam Chand r/o Village-Molichak, P.O. Saliyana, Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily

rated basis in Tea Husbandry department *w.e.f.* March, 2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Tea Husbandry department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a

clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No.FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during April, 2008, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done through some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor w.e.f. April, 2008 upto January, 2009. He raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He had raised the bills. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on

the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 01-8-2015:—

- (1) Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR*.
- (5) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR*.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Pardeep Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of certificate dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of letter dated 13-11-1998 as Ex. PW1/D, copy of letter dated 17-2-1999 as Ex. PW1/E, copy of letter dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 4-4-2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J, copy of office order dated 19-7-2010 as Ex. PW1/K, and copy of Seniority list as Ex. PW1/L. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of notification dated 13-11-1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D to Ex. RW1/E, copy of letter dated 8-7-1998 as Ex. RW1/F, copy of letter dated 17-2-1999 as Ex. RW1/G, copy of notification dated 26-4-1999 as Ex. RW1/H, copy of details of the petitioner as Ex. RW1/I, copies of contingent bills/payment receipts as Ex. RW1/J to Ex. RW1/T, copy of Award as Ex. RW1/U, copy of order dated 20-3-2014 as Ex. RW1/V, copies of registration certificates as Ex. RW1/W to Ex. RW1/Z1, copies of Agreement deeds as Ex. RW1/Z2 to Ex. RW1/Z7.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Pardeep Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/L.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of certificate dated 5-7-2010 relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

19. Ex. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

20. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

21. Ex. PW1/K is the copy of office order dated 19-7-2010 issued by the Registrar, CSK, HPKV, Palampur.

22. Ex. PW1/L is the seniority list of the Daily waged workers in the CSK HPKV as on 31-3-2008.

23. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

25. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

26. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK

HPKV Palampur.

27. Ex.RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

29. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31-3-2008.

30. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

31. Ex.RW1/G is the copy of office order dated 17-2-1999 issued by the Comptroller, HPKV, Palampur.

32. Ex. RW1/H is the copy of notification dated 26-4-1999 issued by the Comptroller, HPKV, Palampur.

33. Ex.RW1/I is the copy of working detail of the petitioner.

34. Ex.RW1/J to Ex.RW1/T are the copies of bills/contingent bills relating to the petitioner.

35. Ex.RW1/U is the copy of Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

36. Ex.RW1/V is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

37. Ex. RW1/W is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

38. Ex. RW1/X is the copy of certificate of registration dated 27-7-2011 pertaining to M/s Sun Security Service.

39. Ex. RW1/Y is the copy of application for registration of establishments employing contract labour issued by Labour Officer-*cum*-Registering Officer, Dharamshala.

40. Ex. RW1/Z is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

41. Ex. RW1/Z1 is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-*cum*-Registering Officer, Dharamshala.

42. Ex. RW1/Z2 is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

43. Ex. RW1/Z3 is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

44. Ex. RW1/Z4 is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/Z5 is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/Z6 is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. RW1/Z7 is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Makgt. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

49. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis and had raised the bills, payment of which had been made to him at the rate not below the government rates. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had earlier worked on individual work contract basis from April, 2008 upto January, 2009. Later on, as per this document, he is shown to have refused to work under the registered contractor in the year 2010, but, however, in the year 2011, he had worked through a registered contractor. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/L of daily waged workers in the university, as it stood on 31-3-2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/J to Ex. RW1/T, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by

engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

50. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

51. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

52. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer

directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

53. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

54. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

55. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief:

56. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 170/2014
 Date of Institution : 17-4-2014
 Date of Decision : 01-7-2019

Shri Veer Singh s/o Shri Nathu Ram, r/o VPO Malan, Tehsil and District Kangra, H.P.

..Petitioner.

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P.

..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Veer Singh s/o Sh. Nathu Ram, VPO Malan, Tehsil & Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned Contractor, as alleged by the above employers, during March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Rice & Wheat department *w.e.f.* the year 1994 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Rice & Wheat department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Rice & Wheat department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow to him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the

petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year w.e.f. the year 1994 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent w.e.f. 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Rice & Wheat department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days w.e.f. 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid

labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during November, 2004, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done by some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor from March, 2007 upto August, 2009. He raised various bills. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishwavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal works, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01-8-2015:—

- (1) Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Veer Singh appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of certificate dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of letter dated 13-11-1998 as Ex. PW1/D, copy of letter dated 17-2-1999 as Ex. PW1/E, copy of letter dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statue as Ex. PW1/H, copy of proceeding dated 4-4-2009 as Ex. PW1/I, copy of Agreement as Ex. PW1/J, copy of office order dated 19-7-2010 as Ex. PW1/K, and copy of Seniority list as Ex. PW1/L. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKVV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of notification dated 13-11-1998 as Ex. RW1/C, copies of seniority lists as Ex. RW1/D to Ex. RW1/E, copy of letter dated 8-7-1998 as Ex. RW1/F, copy of letter dated 17-2-1999 as Ex. RW1/G, copy of notification dated 26-4-1999 as Ex. RW1/H, copy of detail of the petitioner as Ex. RW1/I, copies of contingent bills/payment receipts as Ex. RW1/J to Ex. RW1/Q, copy of Award as Ex. RW1/R, copy of order dated 20-3-2014 as Ex. RW1/S, copies of registration certificates as Ex. RW1/T to Ex. RW1/X, copies of Agreement deeds as Ex. RW1/Y to Ex. RW1/Z5.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common

appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Veer Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/L.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid worker is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is working through the contractor of the university. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex. PW1/B is the copy of certificate dated 05-7-2010 relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

19. Ex. Ex. PW1/I is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

20. Ex. PW1/J is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

21. Ex. PW1/K is the copy of office order dated 19th July, 2010 issued by the Registrar, CSK HPKV, Palampur.

22. Ex. PW1/L is the seniority list of the Daily waged workers in the CSK HPKV as on 31-3-2008.

23. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKVV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1994. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1994 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

25. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

26. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

29. Ex. RW1/E is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as on 31-3-2008.

30. Ex. RW1/F is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

31. Ex.RW1/G is the copy of office order dated 17-2-1999 issued by the Comptroller, HPKV, Palampur.

32. Ex. RW1/H is the copy of notification dated 26-4-1999 issued by the Comptroller, HPKV, Palampur.

33. Ex.RW1/I is the copy of working detail of the petitioner.

34. Ex.RW1/J to Ex.RW1/Q are the copies of bills/contingent bills relating to the petitioner.

35. Ex.RW1/R is the copy of Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

36. Ex.RW1/S is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

37. Ex. RW1/T is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

38. Ex. RW1/U is the copy of certificate of registration dated 27-7-2011 pertaining to M/s Sun Security Service.

39. Ex. RW1/V is the copy of application for registration of establishments employing contract labour issued by Labour Officer-*cum*-Registering Officer, Dharamshala.

40. Ex. RW1/W is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

41. Ex. RW1/X is the copy of application for registration of establishments employing contract labour issued by the Labour Officer-*cum*-Registering Officer, Dharamshala.

42. Ex. RW1/Y is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

43. Ex. RW1/Z is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

44. Ex. RW1/Z1 is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex. RW1/Z2 is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

46. Ex. RW1/Z3 is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

47. Ex. RW1/Z4 is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

48. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof

is on the workman to establish the employer-employee relationship. In *Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu*, (2004) 3 SCC 514, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

49. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked as an unregistered contractor and had raised the bills, payment of which had been made to him as a contractor for the work done. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RW1/I. It shows that the petitioner had worked from November, 2004 upto the year 2005 on work individual contract basis and thereafter, from the year 2006 upto the year 2009 through unregistered contractor. Later on, as per this document, he is shown to have refused to work under the registered contractor in the year 2010, but, however, in the year 2011, he had worked through a registered contractor. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/L of daily waged workers in the university, as it stood on 31-3-2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/J to Ex. RW1/Q, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

50. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1994 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his

part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

51. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

52. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

53. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

54. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under unregistered and registered contractors, he is not entitled to any

relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5:

55. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief:

56. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 1st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 150/2014
Date of Institution : 16-4-2014
Date of Decision : 02-7-2019

Shri Sunil Kumar s/o Shri Kalyan Chand, r/o Village and Post Office Sanghol, Tehsil Jaisinghpur, District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. Rahul Gupta, Adv.

AWARD

The below given reference has been received from the appropriate Government for

adjudication:—

“Whether termination of the services of Shri Sunil Kumar s/o Shri Kalyan Chand, r/o Village and P.O. Sanghol, Tehsil Jaisinghpur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhery Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that the services of the petitioner were engaged by the respondent as a daily waged worker on daily rated basis in Seed Production department *w.e.f.* the year 2000 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Seed Production department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Seed Production department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and the others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2000 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of the reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked

uptil 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Seed Production department from 18-7-2011 uptil 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during February, 2009, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done through some unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor and had raised various bills from time to time. The head of department had not violated any of the provisions of the Act. The petitioner himself had not attended the work, as he was not interested to work as a labourer. He only began to work under the registered contractor after interim order dated

14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per requirement of the project works. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 01-8-2015:—

- (1) Whether termination of services of the claimant/petitioner by the respondent in March/April, 2010 is/was illegal and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR*.
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR*.
- (5) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR*.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sunil Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of experience certificates period from 200 to 2002 as Ex.PW1/B, copy of certificate dated 18-11-2004 as Ex.PW1/C, copy of experience certificate dated 22-7-2005 as Ex.PW1/D, copy of experience certificate dated 6-6-2007 as Ex.PW1/E, copy of letter dated 9.7.2007 as Ex.PW1/F, copy of letter dated 14-3-2001 as Ex.PW1/G, copy of letter dated 8-7-1998 as Ex.PW1/H, copy of notification dated 13-11-1998 as Ex. PW1/I, copy of letter dated 17-2-1999 as Ex. PW1/J, copy of notification dated 26-4-1999 as

Ex. PW1/K, copy of letter dated 4-9-1986 as Ex. PW1/L, copy of statue as Ex. PW1/M, copy of proceeding dated 4-4-2009 as Ex. PW1/N, copy of Agreement as Ex. PW1/O, copy of office order dated 19-7-2010 as Ex. PW1/P and copy of Seniority list as Ex. PW1/Q. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal, Director, Research, CSK, HPKVV, Palampur as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of notification dated 13-11-1998 as Ex. RW1/C, copy of seniority list as Ex. RW1/D, copy of letter dated 8-7-1998 as Ex. RW1/E, copy of letter dated 17-2-1999 as Ex. RW1/F, copy of notification dated 26-4-1999 as Ex. RW1/G, copies of contingent bills/payment receipts as Ex. RW1/H to Ex. RW1/S, copy of Award as Ex. RW1/T, copy of order dated 20-3-2014 as Ex. RW1/U, copies of registration certificates as Ex. RW1/V to Ex. RW1/X, copies of Agreement deeds as Ex. RW1/Y to Ex. RW1/Z4.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Yes
Issue No. 4	: Yes
Issue No. 5	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2 :

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sunil Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/Q.

In the cross-examination, he admitted that his name was not sponsored by the Employment Exchange. He also admitted that no appointment letter had been issued to him by the university. He further admitted that at the time of appointment of a daily paid worker, an appointment letter is issued. Further, he admitted that seniority list of daily paid workers is prepared. He was categorical that neither his name figures in the seniority list nor he had raised any objection in this regard. He specifically denied that he had never been kept on muster roll. However, he had to admit that no muster roll of his has been placed on record by him. It was also admitted by him that as per policy of the Government only those employees were regularized, whose names were there in the muster roll. He also admitted that he had worked in various projects of different departments of the university. These days he is working through the contractor. He clearly admitted that from March, 2010 onwards works are being got done in different departments of the university through contractors. He denied that he had worked as a seasonal worker in various projects. He also denied

that he had never worked as a daily paid worker and had never been removed by the department.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he admitted that these documents reflect the maximum number of workers who can work under the contractor.

12. Ex.PW1/B to Ex.PW1/E are the copies of experience certificates relating to the petitioner.

13. Ex.PW1/F is the copy of letter dated 9-7-2007 pertaining to the petitioner.

14. Ex.PW1/G is the copy of letter dated 14-3-2001 regarding written test/interview for the post of Field Assistant issued by the Deputy Registrar (Rectt.) CSKKV to the petitioner.

15. Ex. PW1/H is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development-Economy instructions.

16. Ex. PW1/I is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/J is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

18. Ex. PW1/K is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

19. Ex. PW1/L is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

20. Ex. PW1/M is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

21. Ex. Ex. PW1/N is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

22. Ex. PW1/O is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

23. Ex.PW1/P is the copy of office order dated 19-7-2010 issued by the Registrar, CSK, HPKV, Palampur.

24. Ex. PW1/Q is the seniority list of the Daily waged workers in the CSK HPKV as on 31-3-2008.

25. Conversely, Shri Rajinder Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply

filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner had been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2000 upto the year 2010, the petitioner had worked for 240 days in every year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

26. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

27. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

28. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

30. Ex. RW1/E is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions which corresponds to Ex. PW1/B.

31. Ex. RW1/F is the copy of office order dated 17-2-1999 issued by the Comptroller, HPKV, Palampur.

32. Ex. RW1/1G is the copy of notification dated 26-4-1999 issued by the Comptroller, HPKV, Palampur.

33. Ex. RW1/H to Ex. RW1/S are the copies of bills/contingent bills relating to the petitioner.

34. Ex. RW1/T is the copy of Award dated 30-6-2014 passed in Reference No. 124/2011 by this Court.

35. Ex. RW1/U is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

36. Ex. RW1/V is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

37. Ex. RW1/W is the copy of certificate of registration dated 27-7-2011 pertaining to M/s Sun Security Service.

38. Ex. RW1/X is the copy of certificate of registration relating to M/s. Nu Vision

Commercial Escorts Services.

39. Ex. RW1/Y is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

40. Ex. RW1/Z is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

41. Ex. RW1/Z1 is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/Z2 is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

43. Ex. RW1/Z3 is the copy of Agreement Deed dated 31.3.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

44. Ex. RW1/Z4 is the copy of Agreement Deed dated 12.5.2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

45. Ex.RA is the copy of working details of the petitioner.

46. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

47. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis and had raised the bills, payment of which had been made to him at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent has tendered in evidence history detail of the petitioner as Ex. RA. It shows that the petitioner had worked from February, 2009 upto the year 2010 as an unregistered contractor himself. Later on, as per this document, he is shown to have refused to work under a registered contractor in the year 2010, but, however, in the year 2011 he had worked through a registered contractor. Then, the petitioner himself tendered in evidence a copy of seniority list as Ex. PW1/Q of daily waged workers in the university, as it stood on 31-3-2008. The name of the petitioner does not figure in it anywhere. While under cross-examination, the petitioner categorically admitted that his name does not find mention in the seniority list. No reason has been assigned by him as to why his name does not figure in the seniority list of daily paid workers maintained by the respondent. He clearly admitted that no objection was ever raised by him for his name being not there in the seniority list. No explanation is also forthcoming from his mouth as to why he did not agitate the matter at the earliest and had challenged the seniority list. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it.

Then, the petitioner himself clearly admitted that he had worked in different projects of the various departments of the university. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. The petitioner in his substantive evidence clearly admitted that he had not filed any of his muster rolls with the petition. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/H to Ex. RW1/S, which have also been proved and exhibited on record by the respondent, also nowhere reflect that the petitioner was a daily paid worker. He had signed these documents, being contingent bills. Not only this, the petitioner very specifically stated in his cross-examination that these days he is working under the contractor. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/H. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/I, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/J, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

49. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2000 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

50. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

51. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

52. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

53. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. It is an admitted case of the petitioner that he had not challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked on contract basis and thereafter under a registered contractor, he is not entitled to any relief as claimed for by him. Hence, both these issues are answered in the negative and are decided against the petitioner.

Issues No. 3 to 5 :

54. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Relief :

55. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 327/2016
Date of Institution : 26-5-2016
Date of Decision : 02-07-2019

Shri Nanak Chand s/o Shri Khiyali Ram, r/o Village Khroh, P.O. Sadhot, Tehsil Sarkaghat,
District Mandi, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, HPPWD Division Sarkaghat, District Mandi, H.P.
 2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P.
- ..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent(s) : Sh. S.S. Kaundal, Dy. D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

“Whether alleged termination of services of Shri Nanak Chand s/o Shri Khiyali Ram, r/o Village Khroh, P.O. Sadhot, Tehsil Sarkaghat, District Mandi, H.P. during August, 2002 by (i) the Executive Engineer, H.P.P.W.D. Division Sarkaghat, District Mandi, H.P. (ii) the Executive Engineer, B&R Division H.P.P.W.D. Dharampur, District Mandi, H.P., who has worked as beldar on daily wages basis and has raised his industrial dispute after more than 11 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period from May, 1997 to August, 2002 and delay of more than 11 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the month of May, 1997 and had worked as such upto August, 2002. He had completed more than 240 days during his service with the respondents in each year as well as the preceding twelve months from the date of his illegal termination. His services were unlawfully terminated by the respondents orally in September, 2002,

without giving a notice of retrenchment and compensation in lieu thereof, which is a clear violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). At the time of his termination, persons junior to him were retained in service by the respondents. The respondents had violated the principle of 'first come last go'. The names of the juniors, who were retained in service by the respondent are S/Sh./Smt. Shashi Pal, Roshani Devi, Mamta Devi and Inder Singh. New/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi were also appointed after his termination. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondents time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The acts and conducts of the respondents are illegal and unjustified. They are violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. Separate replies were filed by them. Reply was filed by respondent No.1 taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were admitted to the extent that the petitioner was engaged as a daily waged beldar on muster roll basis in the month of May, 1997 and had worked intermittently upto December, 1999. He thereafter had worked continuously from the year 2000 upto June, 2001. The services of the petitioner were not terminated. However, he had been transferred from HPPWD Division Sarkaghat to HPPWD Division Dharampur. Respondent No.2, thus, prays for the dismissal of the claim.

4. Respondent No.2 filed a reply taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the month of August, 2001 and he had worked intermittently upto August, 2002. The petitioner had been transferred from Sarkaghat Division. It is denied that the petitioner had worked continuously upto September, 2002. He had left the job of his own sweet will. He had not completed 240 days in each calendar year, so there was no need to serve any notice under Section 25-F of the Act. It is denied that the answering respondent had terminated the services of the petitioner. It was asserted that this respondent had retrenched the daily waged workmen in the months of February, 2004 and July, 2005 respectively, but the petitioner had abandoned the job in the month of September, 2002. Regarding the allegation of engagement of persons junior to the petitioner, it was claimed that Shri Shashi Kant and Smt. Roshani Devi had worked with the department continuously, while workers, namely, Smt. Mamta Devi and Sh. Inder Singh had been engaged on compassionate grounds. So, there was no violation of the provisions of Section 25-G of the Act. The question of giving opportunity for reengagement to the petitioner did not arise at all. There was no violation of the provisions of Section 25-H of the Act by the respondent. The demand notice was raised by the petitioner only in the year 2016, *i.e.* after about 17 years, hence the same is bad due to delay and laches. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. Respondent No.1, thus, prays for the dismissal of the claim.

5. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-1-2018:—

(1) Whether termination of the services of petitioner by the respondents during the year

August, 2002 is/was illegal and unjustified as alleged?

..OPP.

- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged? ..OPR.

Relief.

7. Thereafter, parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Nanak Chand appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of mandays chart of Sh. Shashi Kant as Ex. PW1/B and copy of RTI information dated 13-11-2013 as Ex. PW1/C. Shri Jai Pal Naik, Executive Engineer, HPPWD Division Dharampur (respondent No.2) examined himself as RW1. He tendered his statement by way of affidavit Ex. RW1/A and copy of mandays chart of the petitioner as Ex. RW1/B. Shri Arvind Lakhanpal, Executive Engineer, HPPWD Division Sarkaghat (respondent No.1) examined himself as RW2 and tendered in evidence copy of the details of workers who were transferred to Dharampur Division as Ex.RW2/A (10 pages) and copy of mandays chart of the petitioner as Ex.RW2/B.

8. Arguments of the learned Authorized Representative for the petitioner and learned Deputy District Attorney for the respondents heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Discussed
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is partly allowed awarding lump sum compensation of Rs.1,00,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

10. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. Shri Nanak Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18 Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he admitted that he was engaged by respondent No.2 in the month of May, 1997. He denied that he had worked intermittently from May, 1997 upto December, 1999 with respondent No.2. Volunteered that, he had worked regularly from May, 1997 upto the year 2001. He denied that he was kept at work by respondent No.1 in the month of July, 2001. He further denied that he had also worked intermittently with respondent No.1 upto August, 2002. He

denied that no junior to him had been kept at work by the department. He admitted that he had given the demand notice in the year 2014. Further, he admitted that he had not worked with the department after August, 2002. He denied that he had left the work of his own after August, 2002. Self stated that he was terminated. He clearly admitted that he had not made any representation from the month of August, 2002 upto the year 2014. Volunteered that, he had orally approached the department. He admitted that he does the days' drudgery privately. He also admitted that he owns land, which they cultivate.

12. Ex. PW1/B is the copy of mandays chart relating to Shri Shashi Kant.

13. Ex. PW1/C is the copy of letter dated 13-11-2013 regarding Information Under RTI Act, 2005.

14. Conversely, Shri Jai Pal Naik, Executive Engineer, HPPWD, Division Dharampur (respondent No.2) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the petitioner was employed by the department no appointment letter was issued. He admitted that as per the record there is no correspondence regarding the petitioner having left the job. He also admitted that no compensation has been given to the petitioner as per the record. He feigned ignorance that the persons mentioned in para No. 4 of the statement of claim were junior to the petitioner. He admitted that the petitioner had been transferred from HPPWD Division Sarkaghat to Division Dharampur, where he had worked from July, 2001 upto August, 2002. Volunteered that, he had not worked at all in the month of September, 2001. Further, he admitted that as per the orders of the Hon'ble High Court, Sanjay Kumar and other workmen had been absorbed in other Divisions, i.e. Hamirpur, Tauni Devi and Barsar, instead of Dharampur Division.

15. Ex. RW1/B is the mandays chart relating to the petitioner.

16. Shri Arvind Lakhanpal, Executive Engineer, HPPWD Division, Sarkaghat, District Mandi, H.P. (respondent No.1) appeared as RW2. He proved on record a copy of the workers who were transferred from HPPWD Division Sarkaghat to HPPWD Division Dharampur as Ex.RW2/A and copy of mandays chart of the petitioner as Ex.RW2/B.

In the cross-examination, he admitted that no appointment letter was issued to the petitioner at the time of his appointment. He also admitted that no conditions were settled at the time of his appointment. Further, he admitted that during his absence no notice or correspondence had been made with the petitioner. He also admitted that when the petitioner was transferred his working details had been given by HPPWD Division Dharampur.

17. It is the admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar in HPPWD Division Sarkaghat. The mandays chart Ex.RW2/B produced by respondent No.1 is not in dispute. Its perusal discloses that the services of the petitioner were initially engaged in the month of May, 1997 by respondent No.1 and that he had worked as such upto June, 2001. It is not disputed that thereafter the petitioner stood transferred from HPPWD Division Sarkaghat to HPPWD Division Dharampur. RW1 Shri Jai Pal Naik was categorical in his cross-examination that the petitioner had come on transfer from HPPWD Division Sarkaghat to Division Dharampur. RW2 Shri Arvind Lakhanpal was specific that on the creation of new Division at Dharampur, the petitioner alongwith the others was transferred by the department *vide* letter dated 10-7-2001, copy of which is Ex.RW2/A. A perusal of this document would reveal that the name of the petitioner figures at serial No. 220 of the transfer list. RW1 Shri Jai Pal Naik in his

substantive evidence clearly admitted that the petitioner had worked in Dharampur Division from July, 2001 upto August, 2002. The mandays chart produced by this respondent as Ex.RW1/B discloses that from the month of July, 2001 upto August, 2002 the petitioner had worked with respondent No. 2.

18. A plea was taken by respondents that the petitioner was an intermittent worker. According to respondent No.2, the petitioner had left the job of his own free will and volition. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In **Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand** reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by either of the respondents calling upon him to resume the duties after he allegedly left the same. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Shri Jai Pal Naik (RW1) clearly admitted that as per the record there is no correspondence with the petitioner of his leaving the job. Thus, the plea of abandonment put forth by respondent No.2 is not established.

19. Now the question: Whether in terminating the services of the petitioner, the respondents are proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the affirmative in view of the materials on record.

20. As per Ex.RW2/B the petitioner had worked for 144 days in the year 1997, 12 days in the year 1998, 232 days in the year 1999, 282 days in the year 2000, 154 days *i.e.* from January, 2001 upto June, 2001. Ex.RW1/B reveals that the petitioner had worked for 172 days *i.e.* from July, 2001 upto December, 2001 and 202 days in the year 2002. The petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months. This claim of the petitioner having not been challenged during his cross-examination by the respondents deserves acceptance. More so, in view of the mandays charts as Ex.RW1/B and Ex.RW2/B, which are admitted documents on the part of the respondents. Section 25-F of the Act, which is alleged to have been violated by the respondents reads thus:—

“25-F. Conditions precedent to retrenchment of workmen.- No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

(a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:

(b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and

(c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”

21. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads: —

“25B. Definition of continuous service. For the purposes of this Chapter,-

(1) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(2) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer-

(a) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case.... ”

22. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months preceding the date of his retrenchment, his services could not have been terminated unless he was served with one month's notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. But the respondents having undeniably failed to do so, clearly violated the said provisions of the Act.

23. Ex. PW1/B, the mandays chart of beldar, namely, Shri Shashi Kant, reveals that he was appointed in the year 2000. At the cost of reiteration, I will like to add that the month of initial appointment of the petitioner, as per the pleadings and evidence of the parties on record is May, 1997. There is nothing on record to show that Shri Shashi Kant was senior to the petitioner. Shri Jai Pal Naik (RW1), while under cross-examination merely feigned ignorance to the fact that the persons named in para No.4 of the statement of claim were junior to the petitioner. The aforesaid documentary evidence, which has gone unrebutted on record, clearly indicates that a person junior to the petitioner was still serving the respondents/department, after the alleged termination of the petitioner. Therefore, the latter had failed to adhere to the principle of 'last come first go'. Retaining the juniors at the cost of senior is nothing but unfair labour practice. There is nothing on the file to establish that at the time of engaging a person junior to the petitioner, an opportunity of re-employment was afforded to him.

24. Such being the situation, I have no hesitation to conclude that the respondents have contravened the provisions of Section 25-G of the Act.

25. Faced with the situation, it was contended for the respondents that junior workers had been engaged and retained in service on compassionate grounds. Shri Jai Pal Naik (RW1) in his substantive evidence claimed that the workers, namely, Smt. Mamta Devi and Shri Inder Singh were engaged on compassionate grounds. However, the dates of deaths of the husband/parent of those persons have not come on the file. Admittedly, those persons are still serving the respondents/department and their services were engaged after the engagement of the services of the petitioner. There is nothing on record to show that the deceased husband/parent of the aforementioned persons were senior to the petitioner. Even if the petitioner has failed to prove on record the seniority list of the daily waged beldars, the respondents cannot be absolved from their accountability with regard to the provisions of Section 25-G of the Act, which as discussed above have been violated.

26. It was also claimed by the petitioner that after his alleged disengagement, new/fresh hands had been engaged by the respondents. Except for his self serving and oral testimony, there is

no other oral or documentary evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. That apart and more importantly, the petitioner was not entitled to invoke the provisions of Section 25-H of the Act and seek re-employment by citing the case of other employees, who were already in employment and whose services were regularized by the department on the basis of their service records in terms of the rules. To my mind, the regularization of the employees already in service does not give any right to the retrenched employee so as to enable him to invoke Section 25-H of the Act for claiming re-employment in the service. The reason is that by such act the employer does not offer any fresh employment to any person to fill any vacancy in their set up, but they simply regularize the services of any employee already in service. Such an act does not amount to filling any vacancy. The expression 'employment' signifies a fresh employment to fill the vacancies, whereas the expression 'regularization of the service' signifies that the employee, who is already in service, his services are regularized as per service regulations.

27. While testifying in the Court as PW1, the petitioner has given his age as 47 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that he owns landed property and is doing agricultural chores. Besides this, it has also come in his evidence that nowadays he earns his livelihood by doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed, so he is not entitled to the back wages.

28. The learned Deputy District Attorney for the respondents contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82**, wherein it was inter-alia held:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

29. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

30. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to

be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh alongwith interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about six years and actually worked for 820 days as per the mandays charts on record and that his services were disengaged in August, 2002, who had worked as a non- skilled worker and had raised the industrial dispute by issuance of demand notice after about **eleven years** i.e. demand notice was given on 18-3-2014. Although, it was claimed by the petitioner that he time and again had approached the concerned officers for his re-engagement, but no representations have seen the light of the day. At the risk of repetition, the petitioner on the date of his evidence was aged 47 years and had a sufficient spell of life to work and earn his livelihood. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

31. In view the discussion and findings arrived at by me above, a lump-sum compensation of `1,00,000/- (Rupees one lakh only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are decided accordingly, while issue no.4 is answered in the negative and against the respondents.

Issue No. 3:

32. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Deputy District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings and evidence on record, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is answered in the negative and against the respondents.

Relief:

33. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondents are hereby directed to pay a compensation of `1,00,000/- (Rupees one lakh only) to the petitioner in lieu of the reinstatement, back wages, seniority and past service benefits. Amount of compensation so awarded shall be paid by the respondents to the petitioner within four months from the date of receipt of Award failing which the respondents shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the

appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 2nd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 204/2014
Date of Institution : 03-5-2014
Date of Decision : 03-7-2019

Shri Simpal Sharma s/o Shri Roshan Lal, r/o VPO Parour, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Simpal Sharma, s/o Shri Roshan Lal, r/o V.P.O. Parour, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry & Organic Agriculture department *w.e.f.* 10-6-2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under

the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry & Organic Agriculture department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry & Organic Agriculture department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No.25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for

registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during the year 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor and had raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had

initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Simpal Sharma appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-1-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statues of university Mark-A,

copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/E, copy of award dated 30-6-2014 as Ex. RW1/F, copy of order dated 20-3-2014 as Ex. RW1/G, copy of letter dated 29-1-2011 as Ex. RW1/H, copy of certificate of registration as Ex. RW1/I, copy of license of M/s Sahayta Security as Ex. RW1/J, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/K, copy of contract license dated 16-7-2014 as Ex. RW1/L, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/M to Ex. RW1/R, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/S.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Simpal Sharma examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was

also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-2 (now as Ex. RW1/D to Ex. RW1/E). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was

not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-1-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-1-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/E are the copies of contingent bills relating to the petitioner and others.

29. Ex. RW1/F is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/G is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/H is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/I is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/J is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/K is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/L is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/M is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayata Security Services, Pvt. Ltd.

37. Ex. RW1/N is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/O is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/P is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/Q is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/R is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/S is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishwavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/E. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the

petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/E, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet**

Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9 :

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be

consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 213/2014
Date of Institution : 05-5-2014
Date of Decision : 03-7-2019

Shri Sunil Kumar s/o Shri Ramesh Chand, r/o V.P.O. Rajpur, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Sunil Kumar s/o Shri Ramesh Chand, r/o V.P.O. Rajpur, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry department *w.e.f.* April, 2002 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of

the respondent. The payment was made to the petitioner through head of the department of Agroforestry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2002 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security

Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during September, 2003, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from September, 2003 upto February, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as

per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sunil Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4.4.2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of

letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F2, copy of award dated 30-6-2014 as Ex. RW1/G, copy of order dated 20-3-2014 as Ex. RW1/H, copy of letter dated 29-1-2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/L, copy of contract license dated 16-7-2014 as Ex. RW1/M, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Decided accordingly
Issue No. 4	: Yes
Issue No. 5	: Not pressed
Issue No. 6	: Yes
Issue No. 7	: Yes
Issue No. 8	: Yes
Issue No. 9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sunil Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wage. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-4 (now as Ex. RW1/D to Ex. RW1/F2). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer,

Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2002. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual

workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F2 are the copies of contingent bills relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30-6-2014 passed in Reference No. 124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayata Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F2. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/F2, no where reflect that the petitioner was a daily paid worker. He had signed the documents, being

contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2002 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2002 uptil March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through

a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues No.1 and 2 are answered in the negative and are decided against the petitioner, while issue No.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 52/2016
Date of Institution : 20-2-2016
Date of Decision : 03-7-2019

Shri Ajay Sharma s/o Shri Chuhru Ram Sharma, r/o Village Jangal, P.O. Bagga, Tehsil Jawali, District Kangra, H.P. ..Petitioner.

Versus

1. The Sub Divisional Soil Conservation Officer, Fatehpur, District Kangra, H.P. (Principal Employer)
2. The President, Farm Technocrats' Forum Palampur, District Kangra, H.P. (placement agency) ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Suresh Kumar, Legal Aid Counsel
For Respondent No. 1 : Sh. S.S. Kaundal, Dy. D.A.
For Respondent No. 2 : Sh. T.C. Rana, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Ajay Sharma, s/o Shri Chuhru Ram Sharma, r/o Village Jangal, P.O. Bagga, Tehsil Jawali, District Kangra, H.P. during November, 2014 by (i) the Sub Divisional Soil Conservation Officer, Fatehpur, District Kangra, H.P. (Principal Employer) The President, Farm Technocrats' Forum Palampur, District Kangra, H.P. (placement agency), without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged as a surveyor by respondent No.1 through respondent No. 2. He had worked as such with respondent No.1 from December, 2013 upto October, 2014. 34-35 workers like him have been engaged throughout Himachal Pradesh by respondent No. 2. They all had tenure upto October, 2014. However, he was removed, whereas the other workers were re-engaged in November, 2014. On 6-8-2014, he was present in the office and had marked his attendance in the register in the presence of Shri Ashok Kumar, Senior Assistant and Shri Raju Ram Superintendent. However, respondent No.1 had marked him absent by cutting his attendance. On 7-8-2014, during the first session, he was present in the office and had marked his attendance in the presence of Shri Ashok Kumar, Senior Assistant. During the second session after lunch, he had to go home in connection with some urgent work. He wanted to inform respondent No.1, but he was not present in the office. The superintendent and senior assistant were also away during the lunch break. Since he was in a hurry, he had left half day leave application for 7-8-2014 and full day leave application for 8-8-2014 with Shri Mukesh Kumar, also a surveyor. Said Shri Mukesh Kumar had submitted the application to respondent No.1, but it was rejected. He had been sincerely working in the office as well as in the field. He was not given compensatory leave for having worked on Second

Saturday and Sunday falling on 12-4-2014 and 25-5-2014 respectively. He was not properly treated by respondent No.1, despite his good work. There were three surveyors posted in the office of respondent No.1 *w.e.f.* December, 2013 upto October, 2014. Two of them were engaged on outsourced basis, while the other was from the department. All the three surveyors had jointly surveyed 14-15 schemes. He could not be said to be incompetent, as the work had been done together. Respondent No.1 had not complied with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) and he was got illegally removed from service in connivance with respondent No.2. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed separate replies. Respondent No.1 filed the reply taking preliminary objections regarding lack of maintainability and that there existed no relationship of workman and employer between the petitioner and respondent No.1 and that he was outsourced by respondent No. 2. The contents of the petition were denied on merits. However, it was admitted that the petitioner had worked with respondent No.1 *w.e.f.* December, 2013 upto October, 2014. The petitioner had never been engaged by respondent No.1. Infact, the Director of Agriculture had sent a proposal to the Government of Himachal Pradesh for filling up the vacant posts of surveyor in the Agriculture department. The State Government had decided to hire the services of the surveyors through respondent No. 2, a service provider. Director Agriculture had then made a request to respondent No. 2 to provide suitable manpower. Services of 37 surveyors were provided to the department on fixed emoluments of Rs. 8,310/- plus 9% service charges on salary and 12.36% service tax on service charges. A memorandum of understanding was signed between Director of Agriculture and respondent No.2 on 26-1-2013. The petitioner had been engaged in the office of respondent No.1 upto 31-3-2014 by respondent No. 2 and the period was extended. As per the conditions laid down in the memorandum of understanding, it was clarified that the manpower provided by respondent No.2 shall not have any employment obligation on the department of Agriculture in any case, in the present or future and that respondent No. 2 would indemnify the department. The department of Agriculture was to prepare the bills for the payment to be made to the personnel provided by respondent No. 2 on the basis of monthly attendance. The petitioner had absented from duties on 6-8-2014, but had marked his presence for the said date, when he had reported on duty on 7-8-2014. He after marking his attendance had again left the office. The petitioner was asked regarding his absence from duties and respondent No. 2 had accordingly been informed. The petitioner was habitual of leaving the office without prior permission. Notices dated 3-3-2014 and 7-8-2014 had been served upon him. He responded to them, but had not mended his ways. The petitioner had never applied for a compensatory leave. His performance was not satisfactory. Earlier to it the services of the petitioner had been utilized in the office of Block Project Manager, HPCDP, JICA-ODA, Sarkaghat through respondent No. 2. His performance there was also not satisfactory and it was recommended that his services be withdrawn. Since, the petitioner had been outsourced through respondent No. 2, there existed no relationship of workman and employer in between the petitioner and respondent No.1. So, the violation of the provisions of the Act does not arise. The petitioner is gainfully employed, being an agriculturist. He is also running a shop in village Jangal. Respondent No.1, thus, prays for the dismissal of the claim.

4. Preliminary objections regarding lack of maintainability and that respondent No. 2 was only a service provider, were taken by respondent No. 2 in the reply filed by him. The contents of the petition were admitted to the extent that respondent No. 2 being a service provider had forwarded the names of 37 surveyors, including that of the petitioner, for being engaged on contract basis and on fixed wages, for a fixed period. The petitioner alongwith others had been engaged by respondent No.1 initially in December, 2013 and upto 31st March, 2014, and which period was extended upto 31st October, 2014. In case respondent No.1 has disengaged the petitioner on any ground, respondent No. 2 has nothing to do with it. It is respondent No.1 who is competent to

engage or disengage the services of any person provided by respondent No. 2. Respondent No. 2 cannot compel respondent No.1 either to engage or disengage any person from service provided by respondent No. 2. Hence, it was prayed that the petition be dismissed against respondent No. 2.

5. While filing the rejoinder, the petitioner controverted the averments made in the replies and reiterated those in the statement of claim.

6. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 1-8-2017:—

- (1) Whether termination of the services of the petitioner by the respondents during November, 2014 is/was improper and unjustified as alleged? ..*OPP*.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP*.
- (3) Whether the petition is not maintainable in the present form as alleged? ..*OPR*.
- (4) Whether there is no relationship between workman and employer as petitioner was outsources from respondent No. 2 as alleged? ..*OPR*.

Relief.

7. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ajay Sharma appeared as PW1 and tendered in evidence his statement by way of affidavit Ex.PW1/A, copy of application for half day casual leave as Mark-A and copy of application for full day casual leave as Mark-B. Besides this the petitioner examined Shri Mukesh Kumar (PW2) and Shri Ashok Kumar (PW3) as his witnesses. Through his counsel, the petitioner tendered in evidence a copy of detail of joining of outsourced staff *w.e.f.* 1-11-2014 onwards in the office of respondent No.1 as Ex.PW4/A and copy of his working record for the month of December, 2013 as Ex.PW4/B. Shri Kuldeep Singh Dhiman, Sub-Divisional Soil Conservation Officer, Fatehpur (respondent No. 1) appeared as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of memorandum of understanding dated 26-10-2013 as Ex.RW1/B, copies of letters dated 2-12-2013 & 18-12-2014 as Ex.RW1/C to Ex.RW1/D, copy of attendance sheet of August, 2014 as Ex.RW1/E, copies of letters dated 3-3-2014, 7-8-2014, 16-8-2014, 17-7-2013, 4-4-2014 as Ex.RW1/F to Ex.RW1/J, abstracts of diary registers as Ex.RW1/K to Ex.RW1/P. Shri Bipan Chand Awasthi (respondent No. 2) appeared as RW2. He tendered his statement by way of affidavit Ex. RW2/A, copy of MOU dated 26-10-2013 as Ex.RW2/B, copy of requisition dated 31-10-2013 as Ex.RW2/C, copy of work contract order of the petitioner as Ex.RW2/D, copy of termination dated 18-10-2014 as Ex.RW2/E, copy of evaluation letter report dated 22-12-2014 as Ex.RW2/F, copy of evaluation report dated nil as Ex. RW2/G and copy of evaluation score sheet as Ex. RW2/H.

8. Arguments of the learned counsel for the petitioner at State expenses and the learned counsel for the respondents heard and records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Negative
Issue No. 2	: Negative
Issue No. 3	: Not pressed

Issue No. 4 : Yes

Relief : Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1, 2 and 4:

10. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. Shri Ajay Sharma (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination by respondent No.1, he admitted that he had been sent to work with respondent No.1 by respondent No. 2. He also admitted that he had been kept on outsourcing basis by respondent No.1. Further, he admitted that salary was not being paid to him by respondent No.1. Volunteered that, his salary was coming on the recommendation of respondent No.1. He in his cross-examination by respondent No. 2 admitted that respondent No. 2 is a service provider. He had been removed from service by respondent No.1. He was categorical that his agreement (sic contract) was from 31-3-2014 to 31-10-2014. He also specifically admitted that his agreement (sic contract) was not renewed by respondent No.1.

12. PW2 Shri Mukesh Kumar was examined by the petitioner to the effect that he had worked with him (petitioner). In his cross-examination by respondent No.1, he admitted that no letter had been issued by respondent No. 2 to him or the petitioner for engaging and removing them from work. He also admitted that they were being paid the salary by respondent No. 2. He admitted in his further cross-examination by respondent No.2 that respondent No. 2 is a service provider.

13. PW3 Shri Ashok Kumar produced the requisitioned record. He admitted that the petitioner had been kept on outsourced basis in the department through respondent No.2. He also admitted that the principal employer of the petitioner was respondent No.2.

14. Mark-A is the copy of half day leave application of the petitioner.

15. Mark-B is the copy of one day leave application of the petitioner.

16. Ex.PW4/A is the copy of detail of outsourced staff *w.e.f.* 1-11-2014 onwards relating to Shri Mukesh Kumar and four others.

17. Ex.PW4/B is the copy of working record of outsourced personnel for the month of December, 2013.

18. Conversely, Dr. Kuldeep Singh Dhiman, Sub Divisional Soil Conservation Officer, Fatehpur, District Kangra, H.P. (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by him.

In the cross-examination by respondent No. 2, he admitted that Agriculture department had made a demand to respondent No. 2 for engaging surveyors on outsourced basis and in this regard agreement (Ex.RW1/B) was entered into. On its basis the manpower had been supplied by

respondent No. 2. He also admitted that the candidates who were sent by respondent No. 2 were kept at work. In the cross-examination by the petitioner, he admitted that even today people are working on outsourced basis in the department.

19. Shri Bipan Chand Awasthi, (respondent No. 2) stepped into the witness box as RW2. In his affidavit Ex. RW2/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the reply filed by him in its entirety.

In the cross-examination by respondent No.1, he admitted that the petitioner had been sent to work with respondent No.1 by respondent No. 2. He also admitted that appointment letter Ex.RW1/C had been issued by respondent No. 2. Further, he admitted that *vide* letter Ex.RW1/D, respondent No. 2 only had given the extension of work to the petitioner. It was also admitted by him that Ex.RW2/E had been issued by them. Volunteered that, on the completion of the contract period, he (petitioner) was intimated through a letter. He clearly admitted that respondent No.1 had not engaged the petitioner. He admitted in his cross-examination by the petitioner that in October, 2014 except for the petitioner, no one else's contract was terminated.

20. Ex.RW1/B is the copy of memorandum of understanding dated 26th October, 2013 executed between The Farm Technocrats' Forum, Palampur and the Department of Agriculture, Himachal Pradesh, Shimla-5 through the Director Agriculture, Himachal Pradesh, Shimla-5.

21. Ex.RW1/C is the copy of letter dated 2-12-2013 regarding engagement of Surveyor on contractual basis.

22. Ex.RW1/D is the copy of letter dated 18-2-2014 with regard to engagement as Surveyor on contractual basis, Extension thereof.

23. Ex.RW1/E is the copy of Farm Technocrats' Forum c/o Dy. Director Agriculture, Palampur regarding record of outsourced for the month of August, 2014.

24. Ex.RW1/F is the copy of letter dated nil relating to the petitioner.

25. Ex.RW1/G and Ex.RW1/H are the copies of notices of absence sent to the petitioner on dated 7-8-2014 & 16-8-2014 respectively.

26. Ex.RW1/I is the copy of letter dated 17-7-2013 regarding performance of TA (surveying).

27. Ex.RW1/J is the copy of letter dated 4th April, 2014 regarding salary of surveyors.

28. Ex.RW1/K to Ex.RW1/P are the copies of diary registers.

29. Ex.RW2/B is the copy of memorandum of understanding dated 26th October, 2013 executed between The Farm Technocrats' Forum, Palampur and the Department of Agriculture, Himachal Pradesh, Shimla-5 through the Director Agriculture, Himachal Pradesh, Shimla-5, which corresponds to Ex.RW1/B.

30. Ex.RW2/C is the copy of letter dated 31st October, 2013 regarding approval/permission to fill up vacant posts of surveyors/Junior Draughtsman through outsource agency.

31. Ex.RW2/D is the copy of letter dated 2nd December, 2013 with regard to engagement

of Surveyor on contractual basis.

32. Ex.RW2/E is the copy of letter dated 18th October, 2014 regarding termination of Work Contract.

33. Ex.RW2/F is the copy of letter dated 22-12-2014 regarding performances of evaluation report of surveyors and junior draughtsman.

34. Ex.RW2/G is the copy of evaluation of performance of the petitioner.

35. Ex.RW2/H is the copy of detailed evaluations score sheet of performance rating of the petitioner.

36. The version of the petitioner is that he was appointed/engaged as a surveyor by respondent No.1 and which fact has been denied by the latter.

37. In so far as the relationship of employer and employee is concerned, in case titled as **Workman of Nilgiri Co-op. Mtk v. State of Tamil Naidu & Ors. 2004 LLR 351 (SC)**, various tests have been laid down for determining such relationship. In para 38 of the aforesaid decision, it has been observed thus:—

“The control test and the organization test, therefore, are not the only factors which can be said to be decisive. With a view to elicit the answer, the Court is required to consider several factors which would have a bearing on the result: (a) who is appointing authority; (b) who is the pay master; (c) who can dismiss; (d) how long alternative service lasts; (e) the extent of control and supervision; (f) the nature of the job, e.g. whether, it is professional or skilled; (g) nature of establishment; (h) right to reject”.

38. Similarly, in case titled as **Balwant Rai Saluja and Anr. vs. AIR India Ltd. & Ors., 2014 LLR 1009 (SC)**, the Hon’ble Supreme Court has reiterated the aforesaid law by referring to the aspect of administrative control. It was further held that such burden was required to be discharged by the person who claimed existence of such relationship.

39. In the light of the aforesaid law, it is for the petitioner to establish that he is a workman as defined under Section 2 (s) of the Act. He has not placed on record any document in the shape of appointment letter or salary slips to show that his services were engaged as a surveyor by respondent No.1. In case titled as **Mallikarujan s/o Basawanthappa Ambekar & Ors. vs. Associated Cement C. Ltd., Gulbarga & Ors., 2015 LLR 92**, it has been held by the Hon’ble Karnataka High Court that relationship of employer-employee may be proved by documentary evidence like appointment letters, pay slip of wages/salary, wages register, sanctioning of leave, issuing termination letter or taking disciplinary action by the employer, etc. No such documents have been placed and exhibited on record by the petitioner in support of his case. Rather, from the memorandum of understanding dated 26th October, 2013 entered into between the Director of Agriculture, Himachal Pradesh and respondent No.2, copies of which are placed on record as Ex.RW1/B and Ex.RW2/B, it can be gathered that it was agreed upon between the parties that respondent No.2 shall provide surveyors and junior draftsman on outsourcing basis to the department of Agriculture. This memorandum of understanding was to remain valid from 1st November, 2013 to 30th October, 2014. As per the letter dated 31st October, 2013 addressed by the Director of Agriculture, Himachal Pradesh to respondent No.2, copy of which is Ex.RW2/C on record, the former had asked the latter to issue posting orders to the selected candidates for filling up 37 posts of surveyors through outsourcing. It is specifically admitted by respondent No.2 in his substantive evidence that manpower had been supplied to the Agriculture department at various places on outsourcing basis. It is an admitted case of the parties that the petitioner had been

engaged as a surveyor and that he had worked in the office of respondent No.1. Letter of engagement dated 2-12-2013 had been issued to the petitioner only by respondent No. 2, as is evident from the document placed on record by respondent No.1 as Ex.RW1/C. Similar to this letter is Ex.RW2/D, which has been proved and exhibited on record by respondent No.2. Shri Bipasa hand Awasthi (RW2) was categorical in his cross-examination that the petitioner was issued the appointment letter (Ex.RW1/C) by respondent No.2 for working with respondent No.1. The perusal of letter Ex.RW1/C (also Ex.RW2/D) discloses that the petitioner had been engaged on contractual basis upto 31st March, 2014 on fixed emoluments of Rs. 8,310/- per month. The petitioner specifically admitted in his cross-examination that he had been kept by respondent No.1 through outsourcing. He also clearly admitted that no salary was paid to him by respondent No.1. Shri Bipan Chand Awasthi (RW2) specifically admitted that the petitioner had not been engaged by respondent No.1. Admittedly, the period of engagement of the petitioner stood extended by respondent No. 2 upto 31st October, 2014. In this regard reference can be made to the copy of letter dated 18th February, 2014, which is placed on record by respondent no.1 as Ex.RW1/D. RW2 Shri Bipan Chand Awasthi also clearly admitted that *vide* letter (Ex.RW1/D) respondent No. 2 had extended the period of work of the petitioner. It is an admitted fact that the services of the petitioner were not obtained after 31st October, 2014. A letter of termination of work contract was issued to the petitioner by respondent No.2. Its copy was produced on record by respondent No.2 as Ex.RW2/E. Its perusal discloses that as per the terms and conditions of the work contract order, the contract of the petitioner was to terminate on 31st October, 2014. He was asked by the aforesaid letter to handover the complete charge of his seat and to obtain a no due certificate. It is not the case of the petitioner that this letter is forged or fabricated. In view of the ocular and documentary evidence on record, as discussed above, I fail to understand as to how the petitioner is claiming that his services were engaged as a surveyor by respondent No.1.

40. Burden to prove this aspect was on the petitioner, but the evidence led by him can in no manner lead to the conclusion that such burden was duly discharged in accordance with law. The statements of his witnesses PW2 Shri Mukesh Kumar and PW3 Shri Ashok Kumar are also of no help to him to establish his such case. PW2 Shri Mukesh Kumar was categorical in his cross-examination that the petitioner had been kept and called back only by respondent No.2 and that the salary was also being paid by respondent No.2. PW3 Shri Ashok Kumar was specific that respondent No.2 had kept the petitioner through outsourcing with respondent No.1. No proof of salary or wages having been paid to the petitioner by respondent No.1 was produced on record. There was neither appointment nor termination order issued by respondent No.1. Such being the situation, I have no hesitation to conclude that no relationship of employer and workman exists between respondent No.1 and the petitioner.

41. Then, admittedly the period of contractual appointment of the petitioner came to an end on 31-10-2014. Thereafter, the contractual employment of the petitioner was not renewed. PW1 Shri Ajay Sharma clearly admitted that his contract was not renewed.

42. Clause 1.3 of the memorandum of understanding, Ex. Ex.RW1/B (also Ex.RW2/B) postulates as under:—

“1.3 Manpower provided by FTP, Palampur shall not have any employment obligation on DEPARTMENT OF AGRICULTURE, HIMACHAL PRADESH, SHIMLA-5. In any case in present or future FTF will indemnify DIRECTOR OF AGRICULTURE, HP, SHIMLA-5 in this regard”.

43. It is the basic law that non renewal of the term of the contractual appointment does not fall within the mischief of the word ‘retrenchment’ as defined in the Act as per clause (bb) of Section 2(oo) of the Act. For this reason also, neither the claim petition is maintainable nor it can

be concluded that the respondents had flouted any of the provisions of the Act.

44. Be it stated that the services of the petitioner were not terminated by the respondents as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from 5-12-2013 upto 31-10-2014 came to end with the efflux of time.

45. Such being the situation and taking into account the observations made in cases titled as *State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81*, it is held that the petitioner has no locus standi to sue.

46. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. No relief can be granted to him.

47. Issues No.1 and 2 are answered in the negative against the petitioner, while issue No.4 is answered in the affirmative and in favour of respondent No.1.

Issue No. 3:

48. Not pressed.

Relief:

49. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 733/2016
Date of Institution : 18-11-2016
Date of Decision : 03-07-2019

Shri Ganga Ram s/o Shri Kharku Ram, r/o Village Torola, P.O. Dhawali, Tehsil Sarkaghat,
District Mandi, H.P. *..Petitioner.*

Versus

1. The Engineering-in-Chief HPPWD, Nirman Bhawan, Shimla-2

2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondents : Shri Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Ganga Ram s/o Shri Kharku Ram, r/o Village Torola, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. during 2000 by (i) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla-2, (ii) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis and has raised his industrial dispute after more than 15 years, without complying with the provision of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period during 1999 to 2000 and delay of more than 15 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the year 1999 and had worked as such upto December, 1999. He had completed more than 240 days during his service with the respondents in each year as well as the preceding twelve months from the date of his illegal termination. His services were unlawfully terminated by the respondents orally in April, 1999, without giving a notice of retrenchment and compensation in lieu thereof, which is a clear violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, persons junior to him were retained in service by the respondents. The respondents had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondents are S/Sh./Smt. Shashi Pal, Roshani Devi, Mamta Devi and Inder Singh. New/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi were also appointed after his termination. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondents time and again to re-engage his services, but in vain. He is entitled to regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The acts and conducts of the respondents are illegal and unjustified, which are violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a reply taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the month of July, 1999 and he had worked intermittently upto December, 1999. He had left the job of his own sweet will and had not completed 240 days in each calendar year, so there was no need to serve any notice under Section 25-B of the Act. It is denied that the respondents had terminated the services of the petitioner. It was asserted that the respondents had retrenched the daily waged workmen in the months of February, 2004 and July,

2005 respectively, the petitioner was re-engaged after the order of the Court, but he had abandoned the job of his own accord in December, 1999. Regarding the allegation of engagement of persons junior to the petitioner, it was claimed that Shri Shashi Kant and Smt. Roshani Devi had worked with the department continuously, while workers, namely, Smt. Mamta Devi and Sh. Inder Singh had been engaged on compassionate grounds. So, there was no violation of the provisions of Section 25-G of the Act. The question of giving opportunity for reengagement to the petitioner did not arise at all. There was not violation of the provisions of Section 25-H of the Act by the respondents. The petition is bad due to delay and laches. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 13-9-2018:—

- (1) Whether termination of the service of petitioner by the respondents during the year 2000 is/was legal and justified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned authorized representative for the petitioner and learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: Yes
Issue No. 2	: Negative
Issue No. 3	: No
Issue No. 4	: No
Relief.	: Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 2:

9. Both these issues are intrinsically connected with each other and required common

appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in January, 2000 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the month of July, 1999 and had continuously worked as such upto December, 1999. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were retained. It was also pleaded that new/fresh hands had been engaged by the respondents after his illegal termination. No opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with. 13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In **R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106**, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in the year 2000. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of "last come first go" is envisaged under Section 25G of the Act. The said Section provides:—

"25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman".

16. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh./Smt. Shasi Pal, Roshani Devi, Mamta Devi and Inder Singh, who were junior to him were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and

exhibited on record by the petitioner to show that persons junior to him were still serving the respondents/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

17. As per paragraph no.4, new/fresh hands, namely, Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi were engaged. This averment has remained a mere saying on record, as no oral or documentary evidence has been led on record by the petitioner to show that after his alleged disengagement, new/fresh hands had been engaged. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

19. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4 :

20. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 664/2016
Date of Institution : 12-9-2016
Date of Decision : 03-07-2019

Shri Ravi Kant s/o Shri Ranjha Ram, r/o Village Riyur, P.O. Dharampur, Tehsil Sarkaghat,
District Mandi, H.P. ..Petitioner.

Versus

1. The Engineering-in-Chief HPPWD, Nirman Bhawan, Shimla
2. The Executive Engineer, HPPWD, Division Dharampur, District Mandi, H.P. ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Shri N.L. Kaundal, AR
For the Respondents : Shri Tarsem Kumar, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Ravi Kant s/o Sh. Ranjha Ram, Village Riyur, PO Dharampur, Tehsil Sarkaghat, Distt. Mandi, H.P. during 3/1999 by (1) the Engineer-in-Chief HPPWD, Nirman Bhawan, Shimla, (2) the Executive Engineer, HPPWD, Division Dharampur, Distt. Mandi, H.P. who had worked as beldar on daily wages basis during 12/1998 to 3/1999, only for 73 days, and has raised his industrial dispute *vide* demand notice dated 25-5-2015 after 14 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period as above and delay of more than 14 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was appointed as a daily waged beldar on muster roll basis in the month of December, 1998 and had worked as such upto March, 1999. He had completed more than 240 days during his service with the respondents in each year as well as the preceding twelve months from the date of his illegal termination. His services were unlawfully terminated by the respondents orally in April, 1999, without giving a notice of retrenchment and compensation in lieu thereof, which is a clear violation of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). At the time of his termination, persons junior to him were retained in service by the respondents. The respondents had violated the principle of ‘first come last go’. The names of the juniors, who were retained in service by the respondents are S/Sh./Smt. Shashi Pal, Roshani Devi, Mamta Devi and Inder Singh. New/fresh hands, namely, S/Sh./Smt. Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi were also appointed after his termination. He was not given an opportunity of reemployment. From the date of his disengagement, he is unemployed. He had approached the respondents time and again to re-engage his services, but in vain. He is entitled to

regularization after completion of eight years of service with all consequential benefits. He has been discriminated. The acts and conducts of the respondents are illegal and unjustified, which are violative of Sections 25-F, 25-G and 25-H of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a reply taking preliminary objections regarding lack of maintainability and that the petition suffered from the vice of delay and laches. The contents of the petition were denied on merits. It was asserted that the petitioner was engaged as a daily waged beldar in the month of December, 1998 and he had worked intermittently upto March, 1999. He had left the job of his own sweet will and had not completed 240 days in each calendar year, so there was no need to serve any notice under Section 25-B of the Act. It is denied that the respondents had terminated the services of the petitioner. It was asserted that the respondents had retrenched the daily waged workmen in the months of February, 2004 and July, 2005 respectively, the petitioner was re-engaged after the order of the Court, but he had abandoned the job of his own accord in March, 1999. Regarding the allegation of engagement of persons junior to the petitioner, it was claimed that Shri Shashi Kant and Smt. Roshani Devi had worked with the department continuously, while workers, namely, Smt. Mamta Devi and Sh. Inder Singh had been engaged on compassionate grounds. So, there was no violation of the provisions of Section 25-G of the Act. The question of giving opportunity for reengagement to the petitioner did not arise at all. There was no violation of the provisions of Section 25-H of the Act by the respondents. The demand notice was raised by the petitioner only in the year 2015, i.e. after about 16 years, hence the same is bad due to delay and laches. It was specifically asserted that the petitioner was an agriculturist and was gainfully employed, hence was not entitled for back wages. The Respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 13-9-2018:—

- (1) Whether termination of the service of petitioner by the respondents during March, 1999 is/was legal and justified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition suffers from the vice of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. No evidence was led by the petitioner and his evidence stood closed under the orders of the Court, as despite being afforded ample and last opportunities, he had failed to lead his evidence. Since, no evidence was led on record by the petitioner, the learned Assistant District Attorney, as per his statement made at bar, did not want to lead any evidence on behalf of the respondents.

7. Arguments of the learned authorized representative for the petitioner and learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Yes
Issue No.2	: Negative
Issue No.3	: No
Issue No.4	: No
Relief.	: Petition is dismissed per operative part of the award.

REASONS FOR FINDINGS

Issues No.1 to 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondents in March, 1999 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a daily waged beldar in the month of December, 1998 and had continuously worked as such uptil March, 1999. A plea was also taken by the petitioner that the respondents had not adhered to the principle of 'last come first go', as persons junior to him were retained. It was also pleaded that new/fresh hands had been engaged by the respondents after his illegal termination. No opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

11. It is an admitted case of the parties that the services of the petitioner were engaged as a daily waged beldar.

12. It was contended by the learned Assistant District Attorney for the respondents that the petitioner had not worked for 240 days during the preceding twelve months on daily wages and, therefore, the petitioner cannot claim any protection under the provisions of the Act. The case of the petitioner is that he had completed working for more than 240 days in a year, the purported order of retrenchment is illegal, as conditions precedent as contained in Section 25-F of the Act were not complied with.

13. Section 25-B of the Act defines "continuous service". In terms of Sub Section (2) of Section 25-B that if a workman during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer 240 days within a period of one year, he will be deemed to be in continuous service. The burden of proof is on the petitioner to show that he had worked for 240 days in preceding twelve calendar months prior to his alleged retrenchment. The law on this issue is well settled. In ***R.M. Yellatty vs. Assistant Executive Engineer, (2006) 1 SCC 106***, it has been laid by the Hon'ble Supreme Court that the burden of proof is on the claimant to show that he had worked for 240 days in a given year.

14. Applying the principles laid down in the above case by the Hon'ble Supreme Court, it was required of the petitioner to establish on record that he had worked continuously for a period of 240 days in a block of twelve calendar months anterior to the date of his alleged termination, which as per the reference took place in March, 1999. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of twelve calendar months prior to the date of his alleged termination, as envisaged under Section 25-B of the Act. Therefore, the provisions of Section 25-F of the Act are not attracted in this case.

15. The principle of “last come first go” is envisaged under Section 25G of the Act. The said Section provides:—

“25-G. Procedure for retrenchment.- Where any workman in an industrial establishment, who is a citizen of India, is to be retrenched and he belongs to a particular category of workmen in that establishment, in the absence of any agreement between the employer and the workman in this behalf, the employer shall ordinarily retrench the workman who was the last person to be employed in that category, unless for reasons to be recorded the employer retrenches any other workman”.

16. The petitioner in paragraph 3 of the statement of claim maintained that at the time his services were terminated, the workmen, namely, S/Sh./Smt. Shasi Pal, Roshani Devi, Mamta Devi and Inder Singh, who were junior to him were retained in service by the respondents. This averment has not been established, as no seniority list of beldar category has been placed and exhibited on record by the petitioner to show that persons junior to him were still serving the respondents/department. Therefore, it cannot be held that the respondents had violated the provisions of Section 25-G of the Act.

17. As per paragraph No.4, new/fresh hands, namely, Pardeep Kumar, Vipin Kumar, Lekh Raj, Subhash Chand, Sunita Devi, Kirna Devi, Sunita Devi, Ritesh Kumar, Chanchla Devi, Ramesh Kumar and Ruma Devi were engaged. This averment has remained a mere saying on record, as no oral or documentary evidence has been led on record by the petitioner to show that after his alleged disengagement, new/fresh hands had been engaged. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

18. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

19. It has not been shown by the respondents as to how the present petition/statement of claim is not maintainable. Moreover, this issue was not pressed for by the learned Assistant District Attorney appearing for the respondents at the time of arguments. Otherwise also, from the pleadings, it cannot be said that the petition/statement of claim is not maintainable. Hence, this issue is decided in favour of the petitioner and against the respondents.

Issue No. 4:

20. In **Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another**, (1999) 6 SCC 82, it has been observed by the Hon’ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

21. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondents.

Relief:

22. In the light of what has been discussed hereinabove, while recording the findings on

issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 3rd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 209/2014
Date of Institution : 05-5-2014
Date of Decision : 04-7-2019

Shri Sanjeev Kumar s/o Shri Shyam Lal, r/o V.P.O. Bhrura, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Sanjeev Kumar s/o Shri Shyam Lal, r/o V.P.O. Bhrura, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in

Agriculture Engineering department *w.e.f.* February, 2006 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Plant Breeding. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agriculture Engineering department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been

regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during May, 2007, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on individual work contractor basis/unregistered contractor from December, 2007 uptil February, 2008 and thereafter he had worked as an unregistered contractor. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision

Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Sanjeev Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statues of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy

of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F13, copy of award dated 30-6-2014 as Ex. RW1/G, copy of order dated 20-3-2014 as Ex. RW1/H, copy of letter dated 29-1-2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/L, copy of contract license dated 16-7-2014 as Ex. RW1/M, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Sanjeev Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-

15 (now as Ex. RW1/D to Ex. RW1/F15). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2006. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that

the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F15 are the copies of contingent bills relating to the petitioner.

29. Ex. RW1/G is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayata Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2015 executed between CSK,

HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishwavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-1-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F15. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had

never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/F15, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2006 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2006 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the

aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR
COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 778/2016
Date of Institution : 19-11-2016
Date of Decision : 04-07-2019

Shri Kantah Ram s/o Shri Bajiroo Ram, r/o Village and Post Office Haddal, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondents : Sh. B.C. Katoch A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Kantah Ram, s/o Shri Bajiroo Ram, r/o Village and P.O. Haddal, Tehsil Nurpur, District Kangra, H.P. during 1990 by (i) The Executive Engineer, Nurpur Division, HPPWD Nurpur, District Kangra, H.P. (ii) The Executive Engineer, Jawali Division, HPPWD Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the office of Labour Officer Dharamshala on 13-06-2011 without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1986 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no.3 of the petition. The mate of the petitioner was Shri Charan Dass. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being

given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1986 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Kantah Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex.PW1/B, copy of letter dated 18-12-1999 as Ex.PW1/C, copy of notice dated 4-5-2002 as Ex.PW1/D, copy of resolution dated 18-7-2002 as Ex.RW1/E, copy of UPC and registered postal receipts as Ex.PW1/F & G and copy of letter dated 18-1-2000 as Ex.PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by

way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of mandays charts of Smt. Kusum Lata as Ex. RW1/I and Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Kantah Ram examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification no.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1986 upto the year 1990. He denied that he had never worked for the period from the year 1986 upto the year 1990. He further denied that he was never disengaged by the department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had

obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Ex.PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma daily waged store clerk.

14. Ex.PW1/C is the copy of letter dated 18-12-1999 relating to Smt. Kusum Sharma.

15. Ex.PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 C.P.C.

16. Ex.PW1/E is the copy of letter dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

17. Ex.PW1/F is the copy of UPC dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

18. Ex.PW1/G is the copy of postal receipt.

19. Ex.PW1/H is the copy of letter dated 18-1-2000 regarding engagement of store clerk on daily wage basis.

20. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

21. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

22. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

23. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

24. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

25. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of

Smt. Kusum Lata.

26. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

27. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

28. Ex. RW1/I is the copy of working days of Smt. Kusum Sharma at Dalhousie Division.

29. Ex. RW1/J is the copy of working days of Smt. Kusum Lata of Nurpur Division.

30. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent no.1 in the year 1986 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1986 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1986 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those five years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1986 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

31. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

32. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

33. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless

claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

34. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

35. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

36. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 4th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 720/2016
Date of Institution : 06-10-2016
Date of Decision : 05-07-2019

Shri Dinesh Guleria s/o Late Shri Gian Chand Guleria, r/o Village Ram Nagar Colony,
Thakurdwara, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Dinesh Guleria s/o Late Sh. Gian Chand Guleria r/o Ram Nagar Colony, Thakurdwara, Tehsil Palampur, Distt. Kangra H.P. *w.e.f.* 1-4-2006 by the Divisional Forest Officer, Forest Division Palampur, Distt. Kangra H.P. who had worked as beldar on daily wages basis *w.e.f.* 1-12-1993 to 31-3-2006 and has raised his industrial dispute *vide* demand notice dated 7-5-2015 after more than 9 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged on daily waged basis on muster roll by the respondent *w.e.f.* 01-12-1993 and had worked under the respondent in IGCP Palampur upto 31-12-2006. Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. He had worked continuously with the respondent without any breaks upto 31-12-2006 and had completed 240 days in each calendar year. During the period from the year 2001 upto 31-12-2006, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondent/department on 1-1-2007, without notice. On his asking, he was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31-3-2006 and that his services were no more required by the department in future. Alongwith him 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondent had violated the principle of ‘last come first go’ as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand, Anup Chauhan and Ajay Katoch, who all were junior to the petitioner, had worked with the respondent as such upto 31-12-2006. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad on account of delay and laches and for non-joinder of necessary parties. The contents of the petitioner were denied by the respondent on merits. It is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wager/contractual in the year 2003 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondent is not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondent, the question of adjusting other workers by the respondent does not arise. No verbal

assurance had ever been given by the respondent to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondent also did not arise. The petitioner is working as an agriculturist and is gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18-10-2017:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 01-04-2006 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Dinesh Guleria appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21.12.2004, 1.1.2009, 15.12.2009, 3.12.2009, 15.2.2006, 29.2.2004, 17.11.2008, 2.1.2014 & 21.9.1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K, copies of RTI information dated 4.1.2011, 22.9.2011 & 18.9.2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1.12.2009 as Ex. PW1/N, copy of judgment dated 28.2.2013 as Ex. PW1/O, copy of RTI information dated 1.1.2014 as Ex. PW1/P, copy of order dated 2.12.2008 as Ex. PW1/Q and copy of RTI dated 14.8.2014 as Ex. PW1/R. Shri B.S. Yadav (respondent) appeared as RW1 and tendered his statement by way of affidavit as Ex. RW1/A, copy of list of contractual staff as Ex. RW1/B and copy of agreement as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Issue No.5	: Not pressed
Relief.	: Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Dinesh Guleria (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in the project, but had worked in the forest department. He denied that he was engaged *w.e.f.* 01-4-2003 in the said project. Volunteered that, he was kept at work in the month of December, 1993. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He denied that he had worked on contract basis from March, 2006 upto 30-9-2006. He also showed his ignorance that the project was a German aided project. He was also not aware that the forest department had no concern with the project. He denied that he was kept on temporary basis in the project. He denied that he had neither been kept nor removed from work by the forest department. He denied that from the year 2007 upto the year 2015, he had not raised the dispute. He admitted that he had raised the demand notice in May, 2015. He categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates. He denied that a false claim has been filed just to take undue benefit.

11. Ex. PW1/B is the copy of letter dated 21-12-2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

12. Ex. PW1/C is the copy of letter dated 1-1-2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

13. Ex. PW1/D is the copy of letter dated 15-12-2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

14. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

15. Ex. PW1/F is the copy of letter dated 15-2-2006 regarding closure of Indo-German Changer Project Palampur

16. Ex. PW1/G is the copy of letter dated 29-4-2009 regarding appointment of daily waged drivers- Information under RTI thereof.

17. Ex. PW1/H is the copy of letter dated 17-11-2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

18. Ex. PW1/I is the copy of letter dated 2-1-2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

19. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

20. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

21. Ex. PW1/M is the copy of letter dated 22-9-2014 regarding information of filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

22. Ex. PW1/N is the copy of judgment dated 1-12-2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

23. Ex. PW1/O is the copy of judgment dated 28-2-2013 passed by the learned Additional District Judge-II, Kangra at Dhramshala in Civil Appeal No.271-P/2010.

24. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

25. Ex. PW1/Q is the copy of Award dated 2-12-2008 passed in Reference No.117/2007 by this Court.

26. Ex. PW1/R is the copy of letter dated 14-8-2014, being information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

27. Conversely, Shri B.S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster roll. Self stated that, he was kept on agreement. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by the Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto 31-12-2006, the petitioner had continuously worked for more than 240 days. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was also admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was further admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. Further, he admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

28. Ex. RW1/B is the copy of list of contractual staff of defunct Indo-German Eco-

Development project, Palampur. It depicts the name of the petitioner at serial no.11 and that he had worked on contractual basis for different spells from 01-4-2003 to 30-9-2006.

29. Ex.RW1/C is the copy of Agreement dated 6th December, 2006 executed between the Member Secretary Himachal Pradesh Eco-Development Society, Palampur and Shri Dinesh Guleria (petitioner).

30. It is the case of the petitioner that his services were engaged as a daily wager on muster roll basis *w.e.f.* 1-12-1993 by the respondent/department and had worked upto 31-12-2006, as claimed by him in the statement of claim. The respondent denied this fact. Placed on record by the respondent is a list of contractual staff of defunct Indo-German Eco-Development Project, Palampur, as Ex. RW1/B. Its perusal discloses that the petitioner had worked as Community Mobilizer in the aforesaid project on contractual basis for different spells *w.e.f.* 1-4-2003 and had worked as such upto 30-9-2006. Since, the petitioner had worked in the project even after April, 2006, the question of final termination of his service by the respondent (as per the reference) does not arise. Rather, the same has become insignificant.

31. Next, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact. Therefore, the onus lay on the petitioner to prove such fact. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. This only goes to show that he had never been engaged on the muster roll. Then, no seniority list of daily waged workers maintained by the respondent reflecting his name has been placed and exhibited on record by the petitioner. Rather, as discussed above, per the list of contractual staff of defunct Indo-German Eco-Development Project, Palampur, Ex. RW1/B, the petitioner had worked as a Community Mobilizer in the project for specified periods on contract basis. Lastly, from 1-10-2006 to 30-12-2006, he had worked on contract basis, as is evident from the agreement entered into between him and the Member Secretary Himachal Pradesh Eco Development Society, Palampur, copy of which is placed on record as Ex.RW1/C. The petitioner as per his pleadings and ocular evidence also claimed that he had worked upto 31-12-2006. Admittedly, the period of contractual appointment of the petitioner came to an end on 31-12-2006. Thereafter, the contractual employment of the petitioner was not renewed by the employer, since as per the version of the respondent the Indo-German Changer Project stood closed.

32. In view of the documents Ex.RW1/B and Ex.RW1/C, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services had been engaged by the respondent on daily wage basis. It is the basic law that non renewal of the term of the contractual appointment does not fall within the mischief of the word 'retrenchment' as defined in the Act as per clause (bb) of Section 2(oo) of the Act. For these reasons, neither the claim petition is maintainable nor it can be concluded that the respondent has flouted any of the provisions of the Act.

33. Be it stated that the services of the petitioner were not terminated by the respondent as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from time to time *w.e.f.* 1.4.2003 upto 31.12.2006 came to end with the efflux of time.

34. Such being the situation and taking into account the observations made in cases titled as *State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81*, it is held that the petitioner has no locus standi to sue.

35. It appears to me that the avarice of the petitioner to grab the job and money has forced him to file a totally false and baseless claim. No relief can be granted to him.

36. Both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

38. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that: "The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

39. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5:

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 164/2017
Date of Institution : 08-8-2017

Smt. Bimla Devi w/o Shri Balam Ram, r/o Village Fihad, P.O. Sari, Tehsil Sarkaghat,
District Mandi, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the termination of services of Smt. Bimla Devi w/o Shri Balam Ram, r/o Village Fihad, P.O. Sari, Tehsil Sarkaghat, District Mandi, H.P. from time to time during July, 2000 to March, 2014 and finally terminated during April, 2014 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on daily waged basis in the year 1996. She worked under the supervision of Forest Range Officer, Kamlah upto the year 2014. The latter used to disengage her services without any written order so that she could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The services of the petitioner had been finally terminated by the respondent in March, 2014. Fictional breaks were given by the respondent from the year 1996 upto the year 2014. It is also asserted that while terminating the services of the petitioner in the year 2014, the respondent had not followed the principle of ‘last come first go’ whereas the persons junior to her, namely, S/Sh./Smt. Love Kumar, Nirmla Devi, Shyam Singh and Sheela Devi were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. She had raised a demand notice on 26-8-2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was denied that the petitioner was engaged in the year 1996 and had worked upto the year 2014. It was claimed that she had been engaged in the month of July, 2000 and that she had worked as such upto the year 2014 on bill voucher basis. At the time of termination of services of the petitioner, she had completed more than 240 days. Fictional breaks from time to time *w.e.f.* the year 1996 upto the year 2014 had been given by the respondent. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection that

no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable. The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a casual labourer in the department, but in the month of July, 2000 on seasonal forestry works, as per the availability of works and funds. She had worked intermittently as per the availability of works and funds on muster rolls basis *w.e.f.* July, 2000 to February, 2009, except for the years, 2002, 2004, 2006 and 2007 respectively. She had abandoned the work *w.e.f.* March, 2009 upto July, 2010 and during the years 2011 to 2013. During the months of August, 2010 and March, 2014 she had hired the work from the respondent/department on bill basis and had received the payments for the execution of various works. Despite the availability of the seasonal works, the petitioner used to absent herself from duties. No fictional breaks had ever been given to her. She had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. Work is provided to the seasonal/casual workers as per its availability and funds. The respondent had followed the principle of 'last come first go' strictly and no fresh hands had been engaged. The services of Shri Love Kumar had been regularized as a forest worker, per the orders of the Court, while the services of Smt. Nirmla Devi were engaged on compassionate grounds in compliance of the orders of the Hon'ble State Administrative Tribunal. The services of Shri Shyam Singh were engaged as a contingent paid worker under died in harness policy after death of his father. Smt. Sheela Devi was engaged as a part-time worker *w.e.f.* July, 1998. She was made a whole time worker on 26-11-2009 and is working as a daily wager with the respondent/department. Shri Onkar, a junior to the petitioner was engaged as a casual labourer *w.e.f.* 1-8-2008 for intermittent seasonal forestry works. Since the petitioner had absented herself from work, the question of her termination during the year 2014 did not arise. She had been engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28-4-2009. No junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10-8-2018—

- (1) Whether time to time termination of service of the petitioner by the respondent during July, 2000 to March, 2014 is/was legal and justified as alleged? ..*OPP.*
- (2) Whether final termination of services of petitioner by the respondent during April, 2014 is/was legal and justified as alleged? ..*OPP.*
- (3) If issue No.1 or issue No. 2 are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the present claim petition is not maintainable in the present form as alleged ..*OPR.*
- (5) Whether the petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Bimla Devi appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copy of seniority list dated 31-12-2012

as Ex. PW1/B, copy of seniority list dated 30-11-2016 as Ex. PW1/C and copy of seniority list of daily wagers as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of Award dated 13-1-2005 as Ex. RW1/C, copy of letter dated 19-12-2009 as Ex. RW1/D, copy of order dated 9-7-2003 as Ex. RW1/E, copy of letter dated 27-9-2008 as Ex. RW1/F and copy of letter dated 14-5-1995 as Ex. RW1/G.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: Negative
Issue No.4	: Not pressed
Issue No.5	: No
Relief.	: Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Bimla Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex. PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she was engaged by the department in the month of July, 2000. Volunteered that, she was engaged in the year 1996. She denied that she was not engaged in the year 1996. She denied that there is seasonal work in the department. Self stated that, work is available throughout the year. She denied that she had worked for 8 days in the year 2000, 15 days in the year 2001, 25 days in the year 2003, 14 days in the year 2005, 34 days in the year 2008 and 26 days in the year 2009. She further denied that she had worked on bill basis in the months of August, 2010 and March, 2014. She denied that after the year 2014, she had left the work of her own. She admitted that her mandays produced by the department is correct. She also denied that she was never given fictional breaks. She denied that she had not completed 240 days. She further denied that the department had not engaged any junior. She admitted that Shri Love Kumar was appointed as per the orders of the Court. She also admitted that Smt. Nirmla Devi and Shri Shyam Singh were appointed on compassionate grounds. She feigned ignorance that Smt. Sheela Devi was kept at work as part-time in the month of July, 1998.

11. Ex. PW1/B is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31-12-2012.

12. Ex. PW1/C is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30-11-2016.

13. Ex. PW1/D is the copy of seniority list of Daily Wagers of Joginder Nagar Forest Division.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of the services of the petitioner, no attendance or casual card were issued. Volunteered that, she was kept at work of seasonal nature. He further admitted that no notification has been issued regarding status of Forest Department as seasonal industry. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He admitted that as per Ex. RW1/E Smt. Nirmla Devi, Forest Worker was appointed as a daily waged worker. He feigned ignorance that Smt. Nirmla Devi was kept at work in the year 1998. He admitted that as per Ex. RW1/F Shri Shyam Singh was engaged as a daily waged beldar. He specifically admitted that as per the Court order Shri Love Kumar has been given seniority and continuity in service without back wages and his services were regularized in the month of September, 2007. He also admitted that Shri Shyam Singh is junior to the petitioner. Self stated that, Shri Shyam Singh was appointed as a daily wager on compassionate grounds and is working with the department. He denied that the petitioner had been given breaks from time to time upto the year 2014. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against her. He clearly denied that the petitioner is posted since the year 1996. Volunteered that, she did seasonal work as a casual labourer. He was categorical that there was no agreement with the petitioner that she had been kept at work on bill basis. Volunteered that, as per the notification of the government, she was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial No.1 in Ex. PW1/C is working since the year 2000 and she has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of Award dated 13-1-2005 passed in Reference No. 278/2001 (RBT No. 311/04) by this Tribunal.

17. Ex. RW1/D is the copy of letter dated 19-12-2009 regarding policy to regulate the services of Part-Time workers from Principal CCF, H.P.

18. Ex. RW1/E is the copy of order dated 9-7-2003 passed in O.A. (M) No.20/2000 by the Hon'ble Administrative Tribunal, Shimla.

19. Ex. RW1/F is the copy of letter dated 27-9-2008 regarding appointment of sons, daughters/real relative of government servants died in harness-providing employment thereof.

20. Ex. RW1/G is the copy of letter dated 14-5-1995 regarding application of Smt. Nirmla Devi w/o late Sh. Roop Lal, Daily wager.

21. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of July, 2000 by the respondent. Although, the petitioner has claimed that her services were engaged as a daily wager by the respondent in the year 1996, but she has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that she admitted her mandays chart to be correct.

22. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the

petitioner is July, 2000. Placed on record by the petitioner is the Divisional level seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 31-12-2012. It reflects the name of the petitioner at serial No. 66 and that her services were engaged as a daily wager on 7-7-2004. A revised Divisional seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016, has also been placed on record by the petitioner as Ex. PW1/C. As per this document the initial date of engagement of the petitioner has been reflected as 1-7-2000. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of the budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. As per the seniority list of daily wagers of Joginder Nagar Forest Division, Ex. PW1/D, nine daily wagers shown therein have completed 240 days or more in a year. Persons working for 240 days or more in a year cannot be termed as seasonal workers. Even otherwise, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department has been declared as a seasonal factory, as required under the law. Shri Rajeev Kumar (RW1) while under cross-examination was categorical that no notification has been issued by the Government specifying the forest department as a seasonal industry.

23. The version of the petitioner is that she had worked with the respondent/department upto March, 2014. In the month of March, 2014, her services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex. RW1/B, the petitioner had worked upto the year 2014 but, however, it was itself suggested to the respondent (RW1) by the petitioner that she has been working since the year 2000. Although, the respondent denied the suggestion, but the putting of this suggestion itself by the petitioner leaves no doubt in mind that she claims that she is still serving the department. Then, the Divisional level revised seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016, Ex. PW1/C reflected the name of the petitioner at serial No. 40. As per this document the services of the petitioner were engaged as a daily wager on 1-7-2000. It is an admitted document on the part of the petitioner, having been proved and exhibited on record by her. Had it been that the services of the petitioner had finally been terminated by the respondent in the month of March, 2014, her name ought not to have been there in the above said list. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were disengaged by the respondent in March, 2014 in a wrongful manner. From the own suggestion put to the respondent by the petitioner, it can be gathered that she is still serving the department. The fact that the petitioner even after March, 2014 has worked with the respondent, finds support from the seniority list, Ex. PW1/C, as it reflected the seniority of the daily waged labourers, as it stood on 30-11-2016. In view of these facts, it can easily be said that the petitioner is not speaking the truth. Her services were never finally terminated by the respondent in the month of March, 2014, as alleged. As no retrenchment order was passed by the respondent in the month of March, 2014, it cannot be said that the termination/retrenchment order is illegal and unjustified.

24. So far as providing the fictional breaks to the petitioner by the respondent from time to time from the year 2000 upto March, 2014 is concerned, I would like to say that the said assertion of the petitioner appears to be true. As per the mandays chart, Ex. RW1/B, the work for the entire month was never being provided to the petitioner by the respondent. Be it recorded at the risk of repetition that the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had herself abandoned the work of her own free will and volition. If the petitioner used to remain absent from her duties, then why the respondent did not issue any show cause notice to her or initiate disciplinary proceedings against her? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per her own sweet will and

convenience is incorrect. A plea was also taken to the effect that since the year 2010, the petitioner had been hiring the work from the respondent on bill basis. No doubt, as per the mandays chart Ex. RW1/B for the months of August, 2010 and March, 2014, the petitioner is shown to have done the work on bill basis but, however, as per this document earlier the petitioner was engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of the petitioner by the respondent in the month of March, 2014, is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable.

25. Issues No.1 and 2 are decided accordingly, while issue No.3 is answered in the negative and decided against the petitioner.

Issue No. 4:

26. Not pressed.

Issue No. 5:

27. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:—

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

28. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled ***Liaq Ram vs. State of H.P. and others***, 2012 (2) Him. L.R (FB) 580(majority view) will also be advantageous on this aspect of the matter.

29. During her cross-examination, the petitioner admitted that she owns land, which she cultivates. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

30. This issue is decided in favour of the petitioner and against the respondent.

Relief:

31. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of

her services in the month of March, 2014 being meritless and not maintainable is dismissed. However, it is held that the artificial/fictional breaks were provided to the petitioner by the respondent from the year 2000 upto March, 2014 wrongly and illegally. The period of fictional breaks is ordered to be counted for the purpose of continuous service, except back wages. The claim petition to that extent succeeds and is allowed. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room. Announced in the open Court today this 5th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 220/2014
Date of Institution : 05-5-2014
Date of Decision : 05-7-2019

Shri Shashi Mahinder s/o Shri Chando Ram, r/o Village Amtrar, P.O. Sunerhar, Tehsil and District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Shashi Mahinder s/o Shri Chando Ram, r/o Village Amtrar, P.O. Sunerhar, Tehsil & District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim

that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agroforestry department *w.e.f.* April, 2004 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Agroforestry. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agroforestry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2004 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agroforestry department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment

letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayata Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, *locus standi*, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during December, 2004, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on Individual Work Contractor basis/unregistered contractor from December, 2004 upto February, 2009. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision

Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015: —

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Shashi Mahinder appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy

of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/F2, copy of award dated 30-6-2014 as Ex. RW1/G, copy of order dated 20-3-2014 as Ex. RW1/H, copy of letter dated 29-1-2011 as Ex. RW1/I, copy of certificate of registration as Ex. RW1/J, copy of license of M/s Sahayta Security as Ex. RW1/K, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/L, copy of contract license dated 16-7-2014 as Ex. RW1/M, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/N to Ex. RW1/S, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/T.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Shashi Mahinder examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on

muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-5 (now as Ex. RW1/D to Ex. RW1/F2). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2004. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and

the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2006 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/F15 are the copies of contingent bills relating to the petitioner and others.

29. Ex. RW1/G is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/H is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/I is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/J is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/K is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/L is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/M is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/N is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/O is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/P is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nu vision Commercial & Escort Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishwavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/F5. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the

petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/F5, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2004 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2004 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet**

Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be

consigned to the Record Room.

Announced in the open Court today this 5th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 776/2016
Date of Institution : 19-11-2016
Date of Decision : 05-07-2019

Shri Chain Singh s/o Shri Rattan Chand, r/o Village Rajol, P.O. Kotla, Tehsil Nurpur,
District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondents : Sh. B.C. Katoch A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

Whether the alleged termination of services of Shri Chain Singh s/o Shri Rattan Chand, r/o Village Rajol, P.O. Kotla, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after about 21 years vide demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?"

2. The case of the petitioner, as it emerges from the statement of claim is that he was

engaged by Himachal Pradesh Public Works Department on daily basis during the year 1978 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para No. 3 of the petition. The mate of the petitioner was Shri Kamal Rana. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner along with some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1978 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018: —

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.

- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..OPR.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chain Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex.PW1/B, copy of letter dated 18-12-1999 as Ex.PW1/C, copy of notice dated 4-5-2002 as Ex.PW1/D, copy of resolution dated 18-7-2002 as Ex.RW1/E, copy of UPC and registered postal receipts as Ex.PW1/F & G and copy of letter dated 18-1-2000 as Ex.PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of mandays charts of Smt. Kusum Lata as Ex.RW1/I and Ex.RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Chain Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1978 upto the year 1990. He denied that he had never worked for the period from the year 1978 upto the year 1990. He further denied that he was never disengaged by the department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division

Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Ex.PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma daily waged store clerk.

14. Ex.PW1/C is the copy of letter dated 18-12-1999 relating to Smt. Kusum Sharma.

15. Ex.PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 C.P.C.

16. Ex.PW1/E is the copy of letter dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

17. Ex.PW1/F is the copy of UPC dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

18. Ex.PW1/G is the copy of postal receipt.

19. Ex.PW1/H is the copy of letter dated 18-1-2000 regarding engagement of store clerk on daily wage basis.

20. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

21. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting

of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

22. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

23. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

24. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

25. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

26. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

27. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

28. Ex. RW1/I is the copy of working days of Smt. Kusum Sharma at Dalhousie Division.

29. Ex. RW1/J is the copy of working days of Smt. Kusum Lata of Nurpur Division.

30. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent no.1 in the year 1978 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1978 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1978 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent no.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those twelve years, the period for which he claims to have worked with respondent no.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1978 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

31. From the ocular and documentary evidence of the respondent available on record, it

can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

32. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

33. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

34. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

35. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

36. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 5th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 200/2014
Date of Institution	: 03-5-2014
Date of Decision	: 06-7-2019

Shri Shashi Kumar s/o Shri Jagdish Chand, r/o V.P.O. Biara, Tehsil Palampur, District Kangra, H.P. ..Petitioner.

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Shashi Kumar s/o Shri Jagdish Chand, r/o V.P.O. Biara, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Plant Breeding department *w.e.f.* January, 2007 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Plant Breeding. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Plant Breeding department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2007 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14.7.2011 the Director of

Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent *vide* an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Plant Breeding department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department *vide* order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. His name does not figure in the seniority lists of daily paid workers of the university. It was asserted that as the petitioner had never been engaged by the respondent, so the question of issuing

appointment letter to him did not arise. The demands of union had not been considered by the respondent on the grounds that the services of the workers had not been engaged as daily paid labourers on muster roll basis. The respondent had never forced the petitioner to work under the M/s Sahayata Security Services. No record has been placed on the file by the petitioner in support his claim. The provisions of the Act are not attracted in this case as the petitioner was not engaged by the respondent university. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various work related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that his services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Shashi Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I, copy of office order dated 19-7-2010 as Ex. PW1/J and copy of mandays chart as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copy of Award dated 30-6-2014 as Ex. RW1/D, copy of order dated 20-3-2014 as Ex. RW1/E, copy of letter dated 29-1-2011 as Ex. RW1/F, copy of certificate of registration as Ex. RW1/G, copy of license of M/s Sahayta Security as Ex. RW1/H, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/I, copy of contract license dated 16-7-2014 as Ex. RW1/J, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/K to Ex. RW1/P, copy of extract for I.D. Act as Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/Q.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Shashi Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are

mentioned. He further admitted that tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the copy of requisite information relating to the petitioner, worked on contractual basis.

22. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

23. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

24. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur,

Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he denied that the petitioner was kept at work in the year 2004. Volunteered that, he had never worked with the respondent and thereafter stated that after the year 2010 the workers had been kept on outsource basis. Earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2004 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

26. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

27. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

28. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/E is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/F is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/G is the copy of certificate of registration dated 29-1-2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/H is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/I is the copy of certificate of registration dated 27-7-2011 which corresponds to Ex. PW2/B.

35. Ex. RW1/J is the copy of certificate of registration relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/K is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/L is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/M is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/N is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/O is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/P is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/Q is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily wages workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had never been engaged by the university. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by his as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted that he was

working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid seniority lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2007 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2007 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority lists maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in

the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the case titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority lists of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, as admitted by the petitioner, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking into account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 881/2016
Date of Institution : 07-12-2016
Date of Decision : 06-07-2019

Shri Roshan Deen s/o Shri Ramjaan Deen, r/o VPO Haddal, Tehsil Nurpur, District Kangra,
H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
 2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.
- ..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Naresh Kaul, Adv.
For the Respondents : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Roshan Deen s/o Shri Ramjaan Deen, r/o V.P.O. Haddal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years *vide* demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1985 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of

roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no.3 of the petition. The mates of the petitioner were Shri Rakesh and Shri Mango. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1985 uptil the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the claim petition is not maintainable in the present form? ..OPR.
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Roshan Deen examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex.PW1/B, copy of letter dated 18-12-1999 as Ex.PW1/C, copy of notice dated 4-5-2002 as Ex.PW1/D, copy of resolution dated 18-7-2002 as Ex.RW1/E, copy of UPC and registered postal receipts as Ex.PW1/F & G and copy of letter dated 18-1-2000 as Ex.PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of mandays charts of Smt. Kusum Lata as Ex.RW1/I and Ex.RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Roshan Deen examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification no.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1985 uptil the year 1990. He denied that he had never worked for the period from the year 1985 uptil the year 1990. He further denied that he was never disengaged by the department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any

year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Ex.PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma daily waged store clerk.

14. Ex.PW1/C is the copy of letter dated 18-12-1999 relating to Smt. Kusum Sharma.

15. Ex.PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 C.P.C.

16. Ex.PW1/E is the copy of letter dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

17. Ex.PW1/F is the copy of UPC dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

18. Ex.PW1/G is the copy of postal receipt.

19. Ex.PW1/H is the copy of letter dated 18-1-2000 regarding engagement of store clerk on daily wage basis.

20. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

21. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

22. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

23. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

24. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

25. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

26. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

27. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

28. Ex. RW1/I is the copy of working days of Smt. Kusum Sharma at Dalhousie Division.

29. Ex. RW1/J is the copy of working days of Smt. Kusum Lata of Nurpur Division.

30. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent no.1 in the year 1985 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1985 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No. 2 even for a single day from the year 1985 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent no.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those six years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1985 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

31. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

32. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

33. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

34. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

35. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

36. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 6th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 90/2016
Date of Institution : 04-3-2016
Date of Decision : 08-7-2019

Shri Chander Shekhar s/o Shri Baldev Singh, r/o Village Narwalka, P.O. Kamlah Fort,

Tehsil Sarkaghat, District Mandi, H.P.

..Petitioner.

Versus

The Divisional Manager, H.P. State Forest Development Corporation Limited, Forest Working Division, Sunder Nagar, District Mandi, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR

For the Respondent(s) : Sh. Vijay Mehra, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Chander Shekhar s/o Shri Baldev Singh, r/o Village Narwalka, P.O. Kamlah Fort, Tehsil Sarkaghat, District Mandi, H.P. *w.e.f.* 22-01-1995 by the Divisional Manager, H.P. State Forest Development Corporation Limited, Forest Working Division Sunder Nagar, District Mandi, H.P., who has worked as beldar on daily wages basis only from 01-05-1994 to 21-01-1995 and has raised his industrial dispute vide demand notice dated 26-05-2014 after more than 18 years, allegedly without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period from 01-05-1995 to 21-01-1995 and delay of more than 18 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was engaged as a daily wage/helper by the respondent *w.e.f.* 1-8-1994 upto 21-1-1995. Thereafter, his services were orally terminated by the respondent on the ground that there was no work of helper in Sunder Nagar Forest Division. As and when the post of helper was available, he would be appointed on priority basis. The petitioner had thereafter requested the respondent time and again to re-engage him, but without success. In the month of February, 1995, it came to the notice of the petitioner that his services had been terminated, as the Divisional Manager wanted to appoint one Shri Prem Singh, being the son of his driver, who was close to him. On 6-2-1995, the petitioner had met with the Divisional Manager and had requested him to re-engage him (petitioner), but of no avail. The services of the petitioner had been terminated without following the mandatory provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The respondent had not complied with the provisions of Sections 25-G, 25-H and 25-N of the Act. New/fresh hands had been appointed by the respondent and no opportunity of re-engagement was given to the petitioner. During the course of his employment, fictional breaks were given to him by the respondent illegally. While terminating the services of the petitioner, the respondent had clearly violated the provisions of Section 25-F of the Act. No notice was ever served upon him by the respondent prior to his termination. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. She filed a reply taking preliminary objections regarding lack of maintainability, that the petitioner had not come to the Court with clean hands and had suppressed material facts and that the petitioner himself had willfully remained absent from duty. The contents of the petition were denied on merits. However, it was admitted that the

services of the petitioner were engaged as a helper *w.e.f.* 1-8-1994. Earlier to it, he had been engaged as a daily waged chowkidar on 1-5-1994. From 22-1-1995, the petitioner had absented himself from duty. On 26-4-1995, he was directed by the respondent to report back on duty within a week *vide* letter No.HPSFC/SNR/E-23/398-99, but he failed to resume his duties. Again, he was given an opportunity *vide* office letter No. E-23/7037 dated 27-12-1995 to resume his duties within fifteen days, failing which his services would be terminated. It was specifically denied that the services of the petitioner had been orally terminated by the respondent without adhering to the mandatory provisions of the Act. It was also denied that the provisions of Sections 25-G, 25-H and 25-N of the Act had not been adhered to by the respondent. Further, it was denied that the respondent had engaged Shri Prem Singh in place of the petitioner. Said Shri Prem Singh had already been working as a chowkidar since 14-9-1987 and had been designated as a daily wager helper *w.e.f.* 1-12-1995. Notice was given to the petitioner *vide* letter No.E23/7037 dated 27-12-1995. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 07-9-2017:—

- (1) Whether termination of the services of the petitioner by the respondent *w.e.f.* 22-01-1995 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the petitioner has not come to the Court with clean hands as alleged? ..*OPR.*

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Chander Shekhar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copies of muster rolls dated 5/1994, 6/1994 & 7/1994 as Ex.PW1/B to Ex.PW1/D, copies of pay bills as Ex.PW1/E to Ex.PW1/J, copy of letter dated 18-12-1994 as Ex.PW1/K, copy of seniority list as Ex.PW1/L and L1, copy of seniority list of helpers as Ex.PW1/M, copy of seniority list of forest workers completing 10 years as Ex.PW1/N and N1. The respondent examined one Smt. Suveena Thakur (respondent) appeared as RW1 and tendered in evidence copies of letters as Ex.RW1/A & Ex.RW1/B.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Decided accordingly.
Issue No.2	: Decided accordingly.
Issue No.3	: No
Issue No.4	: Not pressed
Relief.	: Petition is partly allowed awarding lump-sum compensation of Rs. 25,000/- per operative part of the award.

REASONS FOR FINDINGS

Issues No.1, 2 and 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Chander Shekhar (petitioner) stepped into the witness box as PW1. In his affidavit Ex. PW1/A submitted under Order 18, Rule 4 CPC, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he stated that he had been working as a helper with the respondent. He is running a canteen at Shimla for the past three years. In the year 1995 he had been doing days' drudgery privately. He denied that he had absented from duty since 22-1-1995. He further denied that he had intentionally remained absent. Volunteered that, he had been removed from service. He admitted that since 22-1-1995 he had never visited the office, nor joined the duty. Self stated that he had moved an application for re-engaging him. He admitted that he had not filed any such application with the claim, nor had mentioned it in his pleadings. He specifically denied that letter dated 26-4-1995 had been sent to him by the respondent for reporting back on duty. Further, he denied that another letter dated 27-12-1995 had also been sent to him for reporting back on duty within fifteen days. It was also denied by him that despite the notices he had not reported back on duty. He admitted that Shri Prem Singh had worked as a chowkidar with the department. He also admitted that Shri Prem Singh was senior to him. He denied that he is making a phoney statement.

11. Ex.PW1/B to Ex.PW1/D are the copies of muster rolls pertaining to the petitioner and others.

12. Ex.PW1/E to Ex.PW1/J are the copies of pay bills relating to the petitioner.

13. Ex.PW1/K is the copy of letter dated 8-12-1994 regarding seniority list of helpers as on 1-11-1994.

14. Ex.PW1/L and Ex.PW1/L1 are the copies of seniority list of daily wages office helper employee working in Directorate (North) Dharamshala.

15. Ex.PW1/M is the copy of seniority list of helpers as it stood on 31-5-1996 relating to Shri Prem Singh and another.

16. Ex.PW1/N and Ex.PW1/N1 are the copies of statement showing the details of daily wagers who had completed 10 years of service as on 31-1-2006.

17. Conversely, Smt. Suveena Thakur, Divisional Manager, HP State Forest Corporation, Sunder Nagar, District Mandi, H.P. (respondent) testified as RW1. She corroborated on oath the contents of the reply filed by her.

In the cross-examination, she stated that the petitioner was engaged as a daily waged Chowkidar by the department on 1-5-1994 and thereafter as a daily waged helper on 1-8-1994. She admitted that the petitioner had been kept on muster roll. She feigned ignorance whether any appointment letter had been issued to the petitioner or not? However, she admitted that from 1-5-1994 upto 21-1-1995 the petitioner had continuously worked for 240 days. She denied that the

petitioner had not left the work of his own and that he had been removed by the department. She admitted that no receipts of notices Ex.RW1/A & Ex.RW1/B having been sent through registered post, had been filed. She also admitted that the petitioner had never been charge-sheeted for his absence. Further, she admitted that S/Sh. Bhag Singh and Kripal Singh, who are junior to the petitioner are working with the department. She clearly admitted that Ex.PW1/L and Ex.PW1/M are issued by the department. She also admitted that in the seniority list, the name of the petitioner figures at serial No. 30.

18. Ex. RW1/A and Ex.RW1/B are the copies of letters dated 26-4-1995 and 27-12-1995 regarding absence from work.

19. The engagement of the petitioner as a daily waged helper on 1-8-1994 is not in dispute. The respondent as per the pleadings and ocular evidence clearly admitted that the petitioner had been engaged as a daily waged helper on 1-8-1994. It is an admitted fact of the parties that the petitioner had worked with the respondent upto 21-1-1995. The first and foremost point which comes to the fore for determination is whether the petitioner had been disengaged from service or he himself had abandoned the job, as it is claimed by the petitioner that he had orally been terminated by the respondent, whereas the stand taken by the respondent is that since 22-1-1995 the petitioner had remained absent from duty.

20. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. The burden of proving of abandonment is upon the respondent. Simply because a workman fails to report for duty, it cannot be presumed that he has left/abandoned the job. Mere statement of Smt. Suveena Thakur (RW1) alleging that the workman had abandoned the services is entirely insufficient to discharge the said onus. Although, she placed and exhibited on record photocopies of notices dated 26-4-1995 and 27-12-1995 as Ex.RW1/A and Ex.RW1/B to show that the petitioner had been called upon by the respondent to resume the duties after he allegedly left the same but, however, there is not an iota of evidence on record to show that such written communications had ever been served upon the petitioner. Smt. Suveena Thakur (RW1) neither produced any postal receipts, nor any despatch register maintained by the respondent to show that the notices had been sent and served upon the petitioner. She even did not seek time to produce any such record. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondent for his alleged willful absence from duty. Smt. Suveena Thakur (RW1) clearly admitted that the petitioner had never been charge-sheeted. Faced with the situation, it was contended by the learned counsel for the respondent that it was not required of the respondent to proceed against the workman by way of a domestic inquiry. True it is that the petitioner, a daily wager, was not amenable to the provisions of CCS, (CCA) Rules and as such a domestic inquiry as stipulated therein was not strictly required to be initiated. Nonetheless, absence from duty is a serious misconduct and the principle of natural justice did require that some sort of a fact finding inquiry was got conducted by the respondent. In the present case as it emerges from the evidence on record, so was not done by the respondent. At the risk of repetition, the written communications by the respondent calling upon the petitioner to resume his duties, were not proved to have been duly served upon him. Then, '*animus*' to abandon, it is well settled, must necessarily be shown to exist, before a case of abandonment can be said to have been made out. No evidence, of any such '*animus*' on the part of the petitioner, is forthcoming in the present case. Thus, the plea of abandonment put forth by the respondent/employer is not established. So, the claim of the petitioner that his services were orally terminated by the respondent *w.e.f.* 22-1-1995 has to be accepted as correct on the balance of probability.

21. Now the question: Whether in terminating the services of the petitioner, the respondent is proved to have violated the provisions of Section 25-F of the Act. The answer, to my mind, is in the affirmative in view of the material on record.

22. The petitioner in his statement of claim as well as his affidavit Ex.PW1/A claimed that he had completed more than 240 days in the preceding twelve calendar months. This claim of the petitioner having not been challenged during his cross-examination by the respondent deserves acceptance. More so, in view of the admission made by Smt. Suveena Thakur (RW1) in her substantive evidence that from 1-5-1994 upto 21-1-1995 the petitioner had continuously worked and completed 240 days. Section 25-F of the Act, which is alleged to have been violated by the respondent reads thus:—

“25-F. Conditions precedent to retrenchment of workmen.—No workman employed in any industry who has been in continuous service for not less than one year under an employer shall be retrenched by that employer until-

- (a) the workman has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired, or the workman has been paid in lieu of such notice, wages for the period of the notice:*
- (b) the workman has been paid, at the time of retrenchment compensation which shall be equivalent to fifteen days' average pay for every completed year of continuous service or any part thereof in excess of six months; and*
- (c) notice in the prescribed manner is served on the appropriate Government or such authority as may be specified by the appropriate Government by notification in the Official Gazette.”*

23. In view of these provisions, no workman employed in any industry, who has been in continuous service for not less than one year, can be retrenched by the employer unless he has been given one month's notice in writing indicating the reasons for retrenchment and the period of notice has expired or the workman has been paid in lieu of such notice, wages for the period of notice. The expression “continuous service” has been defined under Section 25B of the Act, which in its material part reads:—

“25B. Definition of continuous service. For the purposes of this Chapter,—

(3) a workman shall be said to be in continuous service for a period if he is, for that period, in uninterrupted service, including service which may be interrupted on account of sickness or authorised leave or an accident or a strike which is not illegal, or a lock-out or a cessation of work which is not due to any fault on the part of the workman;

(4) where a workman is not in continuous service within the meaning of clause (1) for a period of one year or six months, he shall be deemed to be in continuous service under an employer—

(b) for a period of one year, if the workman, during a period of twelve calendar months preceding the date with reference to which calculation is to be made, has actually worked under the employer for not less than-

(i) one hundred and ninety days in the case of a workman employed below ground in a mine; and

(ii) two hundred and forty days, in any other case....”

24. Since, the petitioner is proved to have completed more than 240 days during the period of twelve calendar months preceding the date of his retrenchment, his services could not have been

terminated unless he was served with one month's notice and paid the retrenchment compensation, as envisaged under Section 25-F of the Act. But the respondent having undeniably failed to do so, clearly violated the said provisions of the Act.

25. Ex. PW1/M, *i.e.* seniority list of helpers relating to Shri Prem Singh and one another reveals that Shri Kripal Singh was appointed by the respondent on 7-9-1994. At the cost of reiteration, I will like to add that as per the admitted case of the parties, the date of initial appointment of the petitioner is 1-8-1994. There is nothing on record to show that Shri Kripal Singh was senior to the petitioner. Rather, Smt. Suveena Thakur (RW1) in her cross-examination admitted that S/Sh. Bhag Chand and Kripal Singh, both were junior to the petitioner and were working in the department. This indicates that persons junior to the petitioner are still serving the respondent/department. The latter has failed to adhere to the principle of 'last come first go'. Retaining the junior at the cost of the senior is nothing but unfair labour practice.

26. It was also claimed by the petitioner that new appointments had been made by the respondent. Except for his self serving and oral testimony, there is no other oral or documentary, cogent, convincing and reliable evidence on the file to show that the employer had offered any fresh appointment to any person to fill any vacancy in their set up. That being so, the provisions of Section 25-H of the Act are not attracted in this case. Although, in the statement of claim, it was averred by the petitioner that the respondent had engaged Shri Prem Singh, son of the driver of the respondent but, however, it was specifically admitted by the petitioner in his cross-examination that said Shri Prem Singh was senior to him.

27. Such being the situation, I have no hesitation to conclude that the respondent had contravened the provisions of Section 25-G of the Act. The termination of the services of the petitioner is illegal and unjustified.

28. While testifying in the Court as PW1, the petitioner has given his age as 44 years. It is well known that a person like the petitioner will not sit at home during the period he is/was out of the service. Otherwise too, during his cross-examination, the petitioner admitted that for the past three years he is running a canteen at Shimla. In the year 1995 he had been doing the days' drudgery privately. The petitioner has failed to discharge the initial onus that during the period of his forced idleness, he is/was not gainfully employed. For these reasons, he is not entitled to the back wages.

29. The learned counsel for the respondent contended that there being an inordinate delay in the steps taken by the petitioner for the redressal of his grievance, his claim suffers from the vice of delay and laches, which disentitles him to the relief(s) he has prayed for. The claim as such is not maintainable. This contention, to my thinking, appears to be ill conceived. The question of delay and laches was considered by the Hon'ble Supreme Court in case titled as ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another***, (1999) 6 SCC 82, wherein it was inter-alia held: —

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

30. In view of the aforesaid binding precedent, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by

our own Hon'ble High Court in case titled as **Liaq Ram vs. State of H.P. and ors., 2012 (2) Him. L.R.(FB) 580 (majority view)** will also be advantageous on this aspect of the matter.

31. In case titled as **Assistant Engineer Rajasthan Development Corporation and another vs. Geetam Singh** reported in **2013 (136) FLR 893 (SC)**, it was held by the Hon'ble Supreme Court that before exercising its judicial discretion, the Labour Court has to keep in view all relevant factors including the mode and manner of appointment, nature of employment, length of service, the ground on which termination has been set aside and the delay in raising industrial dispute before grant of relief in an industrial dispute. It was also observed that the workman had worked for 286 days and had raised industrial dispute in the year 1992, whereas his services had been terminated in the year 1986 and had raised industrial dispute after six years. It was held that though the compensation awarded by the Single Judge of the Hon'ble High Court was too low and liable to be enhanced by the Division Bench, but surely reinstatement of the workman in the facts and circumstances was not the appropriate relief and thus a lump-sum of Rs.1 lakh along-with interest @ 9% per annum had been awarded. Recently, in case titled as **Deputy Executive Engineer vs. Kuberbhai Kanjibhai 2019 (160) FLR 651**, by relying upon the cases of **Bharat Sanchar Nigam Limited vs. Bhurumal (2014) 7 SCC 177** and **District Development Officer & another vs. Satish Kantilal Amerelia 2018 (156) FLR 266 (SC)**, it has been held by the Hon'ble Supreme Court that where the workman had worked as a daily wager or muster roll employee hardly for a few years and where the dispute had been raised by him almost after 15 years of his alleged termination, he was held entitled only for lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and other consequential benefits. Similarly, in case titled as **State of Uttarakhand & Anr. vs. Raj Kumar, 2019 (160) FLR 791**, the Hon'ble Supreme Court has held that where a daily wager has worked for about a year and a dispute was raised by him after 25 years of the alleged termination, he had no right to claim regularization and was only entitled to lump sum monetary compensation in full and final satisfaction of his claim of reinstatement and consequential benefits. In the case on hand before this Court, the factors which have weighed are that the petitioner in all remained engaged for about one year and as per the admission made by RW1 Smt. Suveena Thakur, had complete 240 days. His services were disengaged in January, 1995. He had worked as a non- skilled worker and had raised the industrial dispute by issuance of demand notice after more than **eighteen years** i.e. demand notice was given on 26-5-2014. Taking into consideration the factors mentioned above and the precedents laid down by the Hon'ble Supreme Court in the aforementioned cases, the petitioner is not entitled for reinstatement or for back wages, but only for a lump sum compensation.

32. In view of the discussion and findings arrived at by me above, a lump-sum compensation of `25,000/- (Rupees twenty five thousand only) would be an appropriate relief to which the petitioner is entitled to in the facts and circumstances of the given case. It is further made clear that the amount of compensation shall be paid within four months from the date of receipt of Award, failing which the petitioner would be entitled to interest @ 9% per annum from date of Award till its realization. Issues No. 1 and 2 are answered and decided accordingly, while issue no.3 is decided against the respondent and in favour of the petitioner.

Issue No. 4:

33. Not pressed.

Relief:

34. In the light of what has been discussed hereinabove while recording the findings on issues supra, the respondent is hereby directed to pay a compensation of `25,000/- (Rupees twenty five thousand only) to the petitioner in lieu of the reinstatement, back wages, seniority and past

service benefits. Amount of compensation so awarded shall be paid by the respondent to the petitioner within four months from the date of receipt of Award failing which the respondent shall be liable to pay interest @ 9% per annum on the said amount from the date of award till realization/deposit of the amount. In the peculiar facts and circumstances of the case, the parties are left to bear their own costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 8th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 64/2015
Date of Institution : 23-2-2015
Date of Decision : 13-07-2019

Shri Gurbachan Singh s/o Shri Chuhara Ram, r/o VPO Bassi, Tehsil Shri Naina Deviji,
District Bilaspur, H.P. ..Petitioner.

Versus

The Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District
Bilaspur, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent : Sh. L.M. Sharma, Dy.D.A.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Gurbachan Singh s/o Shri Chuhara Ram, r/o V.P.O. Bassi, Tehsil Shri Naina Deviji, District Bilaspur, H.P. w.e.f. 01-07-2012 (as alleged by workman) by the Executive Engineer, Changer Area Lift Irrigation Project Division Bassi, District Bilaspur, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The file taken up today for conciliation before the Bench of National Lok Adalat.

Conciliation tried and is successful. However, the learned Authorized Representative for the petitioner had made the below given statement in the Court on 01-7-2019:—

“C;ku fd;k fd eSa ;g case oknh dh rjQ ls u pykuk pkg rk gawA eSa ;g case/Reference No.64/15 okfil ys rk gwaA nkf[ky n[rj fd;k tkosA”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge, National Lok Adalat,
Dharamshala Distt. Kangra, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 112/2018
Date of Institution : 31-12-2018
Date of Decision : 13-07-2019

Shri Vishal Verma s/o Shri Suresh Kumar, r/o Ward No.9, V.P.O. Basdehra, Tehsil Basdehra, District Una, H.P. ..*Petitioner.*

Versus

The Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P. ..*Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, Adv.
For the Respondent : Sh. Surinder Pal, Assistant Manager (HR)

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Vishal Verma s/o Shri Suresh Kumar, r/o Ward No.9, V.P.O. Basdehra, Tehsil Basdehra, District Una, H.P. w.e.f. 21-05-2018 by the Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?”

2. The file taken up today for conciliation before the Bench of National Lok Adalat. Authorization letter has been filed on behalf of the respondent. Conciliation tried and is successful. However, the petitioner had made the below given statement in the Court on 01-7-2019:—

“C;ku fd;k fd mijksDr ekeyk reference tks individual capacity esa bl U;k;ky; esa vk;k gS mls eSa okfil ysar gaw D;ksafd eq>s fudkyus ckjk reference No.70/18 igys gh vk pqdk gS ftldk nkok eSaus o esjs lkfFk;ksa }kjk nk;j fd;k gSA vr% esjs bl case dks nkf[ky n[rj fd;k tkosA”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
National Lok Adalat,
Dharamshala Distt. Kangra, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 109/2018
Date of Institution : 31-12-2018
Date of Decision : 13-07-2019

Shri Gopal s/o Shri Roshan Lal, r/o V.P.O. Rainsari, Tehsil & District Una, H.P.
..Petitioner.

Versus

The Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, Adv.
For the Respondent : Sh. Surinder Pal, Assistant Manager (HR)

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Gopal s/o Shri Roshan Lal, r/o V.P.O. Rainsari,

Tehsil & District Una, H.P. w.e.f. 21-05-2018 by the Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?"

2. The file taken up today for conciliation before the Bench of National Lok Adalat. Authorization letter has been filed on behalf of the respondent. Conciliation tried and is successful. However, the petitioner had made the below given statement in the Court on 01-7-2019:—

“C;ku fd;k fd mijksDr ekeyk reference tks individual capacity esa bl vnkyr esa vk;k gS mls eSa okfil ysuk pkgirk gaw D;ksafd eq>s fudkyus ckjk reference No.70/18 esa igys gh vk pqdk gS ftldk nkok eSaus o esjs lkfFk;ksa }kjk nk;j fd;k gSA vr% eSa bl case dks okfil ysruk gawA”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
National Lok Adalat,
Dharamshala Distt. Kangra, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 111/2018
Date of Institution : 31-12-2018
Date of Decision : 13-07-2019

Shri Sikandar Pal s/o Shri Chaman Lal, r/o Village Dangehra, P.O. Barnoh, Tehsil & District Una, H.P. ..Petitioner.

Versus

The Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, Adv.
For the Respondent : Sh. Surinder Pal, Assistant Manager (HR)

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Sikandar Pal s/o Shri Chaman Lal, r/o Village Dangehra, P.O. Barnoh, Tehsil & District Una, H.P. w.e.f. 21-05-2018 by the Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?”

2. The file taken up today for conciliation before the Bench of National Lok Adalat. Authorization letter has been filed on behalf of the respondent. Conciliation tried and is successful. However, the petitioner had made the below given statement in the Court on 01-7-2019:—

“C;ku fd;k fd mijksDr ekeyk reference tks individual capacity eas bl vnkyr eas vk;k gS mls eSa okfil ysrg gaw D;ksafd eq>s fudkyus ckjk reference No.70/18 igys gh vk pqdk gS ftdk nkok eSaus o esjs lkfFk;ksa }kjk nk;j fd;k gSA vr% esjs bl case dks nkf[ky n[rj fd;k tkosA”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge, National Lok
Adalat, Dharamshala Distt.
Kangra, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 110/2018
Date of Institution : 31-12-2018
Date of Decision : 13-07-2019

Shri Amit Sharma s/o Shri Vinod Kumar Sharma, r/o VPO Takka, Tehsil & District Una,
H.P. ..Petitioner.

Versus

The Employer/Managing Director, M/s Inox Wind Limited, VPO Basal, Tehsil & District
Una, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Shri Amit Sharma s/o Sh. Vinod Kumar Sharma, r/o V.P.O. Takka, Tehsil & District Una, H.P. w.e.f. 21-05-2018 by the Employer/Managing Director, M/s Inox Wind Limited, V.P.O. Basal, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/Management?”

2. The file taken up today for conciliation before the Bench of National Lok Adalat. Authorization letter has been filed on behalf of the respondent. Conciliation tried and is successful. However, the petitioner had made the below given statement in the Court on 01-7-2019:—

“C;ku fd;k fd mijksDr ekeyk reference tks individual capacity esa bl vnkyr eas vk;k gS mls eSa okfil ysuk pkgark gaw D;ksafd eq>s fudkyus ckjk reference No.70/18 esa igys gh vk pqdk gS ftdk nkok eSaus o esjs lkfFk;ksa }kjk nk;j fd;k gSA vr% esjs bl case dks nkf[ky n[rj fd;k tkosA”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge, National Lok
Adalat, Dharamshala Distt.
Kangra, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 651/2016
Date of Institution : 09-9-2016
Date of Decision : 13-07-2019

Shri Sunder Singh s/o Shri Swaran, r/o VPO Deoli, Tehsil Amb, District Una, H.P.
..Petitioner .

Versus

1. The President Managing Director, DAV College Managing Committee, Arya Samaj

2. The Principal, D.A.V. Senior Secondary Public School, Ambota, District Una, H.P.
..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Rajat Chaudhary, Adv.
For the Respondents : Sh. S.K. Nanda, Adv. vice

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication: —

“Whether termination of services of Shri Sunder Singh s/o Shri Swaran Singh, r/o V.P.O. Deoli, Tehsil Amb, District Una, H.P. w.e.f. 15-03-2014 after conducting domestic enquiry by (i) the President/Managing Director, D.A.V. College Managing Committee, Arya Samaj Bhawan, UP Block, Pittampura, Delhi-110034 (ii) the Principal, D.A.V. Senior Secondary Public School, Ambota, District Una, H.P. who was employed as driver, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employers/Management?”

2. The file taken up today for conciliation before the Bench of National Lok Adalat. Conciliation tried and is successful. However, Shri Namit Sharma, Principal DAV Sr. Secondary School Ambota, District Una, H.P. (respondent) as well as the petitioner had made the below given statements in the Court on 02-7-2019:—

“ब्यान किया कि हमारी management प्रार्थी को outsourcing agency के through बतौर Driver रखने को 01-9-2019 से तैयार है।”

“ब्यान किया कि मैंने उपरोक्त ब्यान सुन लिया है । जो मुझे मंजूर है। जिसके तहत फैसला किया जाए।”

3. In view of the above statements, the present reference is disposed of in the terms that the respondent/management would engage the petitioner on outsource basis from 1-9-2019 onwards. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge, National Lok
Adalat, Dharamshala Distt.
Kangra, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 203/2017
Date of Institution : 10-10-2017
Date of Decision : 13-07-2019

Shri Prem Dass Kaundal s/o Late Shri Kirpa Ram, r/o VPO Serathana, Tehsil Nagrota Bagwan, District Kangra, H.P. ..Petitioner.

Versus

M/s Divya Himachal Prakashan Pvt. Ltd. Kangra-Pathankot Road, Old Matour, Tehsil & District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ravinder Aggarwal, AR
For the Respondents : Sh. Rajat Chaudhary, Adv. Vice
: Sh. Anand Sharma, (HR)

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of services of Prem Kaundal s/o Late Shri Kirpa Ram, r/o V.P.O. Sherathana, Tehsil & District Kangra, H.P. *w.e.f.* 23-11-2015 by (i) the Editor, M/s Divya Himachal, Old Mataur, Pathankot-Kangra Road, Tehsil & District Kangra, H.P. (ii) the employer, M/s Samparn Printers, Kangra Pathankot Marg, Old Mataur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The file taken up today for conciliation before the Bench of National Lok Adalat. Conciliation tried and is successful. However, the petitioner had made the below given statement in the Court on 06-7-2019:—

“ब्यान किया कि जो मौजूदा तममितमदबम इस न्यायालय में चल रहा है उसे मैं अपनी इच्छा से वापिस ले रहा हूँ क्योंकि मेरा समझौता नियोजक पक्ष के साथ हो गया है । अतः मैं इस बेंच को वापिस ले रहा हूँ। दाखिल दफ्तर किया जावे।”

3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
*Presiding Judge, National Lok
Adalat, Dharamshala Distt.
Kangra, H.P.*

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 208/2017
Date of Institution : 06-11-2017
Date of Decision : 13-07-2019

Shri Prem Dass Kaundal s/o Shri Kirpa Ram, r/o VPO Serathana, Tehsil Nagrota Bagwan,
District Kangra, H.P. ..Petitioner.

Versus

M/s Divya Himachal Prakashan Pvt. Ltd. Kangra-Pathankot Road, Old Matour, Tehsil &
District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Ravinder Aggarwal, AR
For the Respondent : Sh. Rajat Chaudhary, Adv. Vice
: Sh. Anand Sharma, (HR)

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

1. “Whether employer-employee relationship existed between the applicant/claimant and management ever?” If Yes.
2. “Whether applicant/claimant is entitled to the amount of Rs.10,61,982/- as claimed by him from the management/respondent under the Majithia Wage Board?”
2. The file taken up today for conciliation before the Bench of National Lok Adalat. Conciliation tried and is successful. However, the petitioner had made the below given statement in the Court on 06.7.2019:—

“ब्यान किया कि जो मेरा मौजूदा reference Divya Himachal Pvt. Ltd. के विरुद्ध चल रहा है उसका समझौता दोनों पक्षों के साथ आपसी रजामंदी से हो गया है। जिसमें Samparn Printers के द्वारा Rs. 2,50,000/- (Rupees two lakhs fifty thousand only) Cheque No. 494875 dated 27-6-2019 है। अब मेरा कोई भी claim Divya Himachal Pvt. Ltd. o Samparn Printer के खिलाफ न है। मैं आज दिनांक 06-7-2019 को माननीय अदालत में उपरोक्त Cheque प्राप्त कर लिया है। अतः उपरोक्त ब्यान को मद्देनजर रखते हुए बेंच वापिस लेता हूँ दाखिल दफ्तर किया जावे।”
3. In view of the above statement, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.
4. The reference is answered in the aforesaid terms. A copy of this Order/Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the National Lok Adalat today this 13th day of July, 2019.

Sd/-
(B.S. PATHANIA),
Member.

Sd/-
(YOGESH JASWAL),
Presiding Judge, National Lok
Adalat, Dharamshala Distt.
Kangra, H.P.

**N THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 884/2016
Date of Institution : 07-12-2016
Date of Decision : 15-07-2019

Shri Tilak Raj s/o Shri Dumnu Ram, r/o VPO Haddal, Tehsil Nurpur, District Kangra, H.P.
..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
 2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.
- ..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv.Vice
For the Respondents : Sh. B.C. Katoch A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Tilak Raj s/o Shri Dumnu Ram, r/o V.P.O. Haddal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the Labour Office Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1985 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no.3 of the petition. The mate of the petitioner was Shri Kartar Singh. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being

given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali *vide* H.P. Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1985 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Tilak Raj examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex.PW1/B, copy of letter dated 18-12-1999 as Ex.PW1/C, copy of notice dated 4-5-2002 as Ex.PW1/D, copy of resolution dated 18-7-2002 as Ex.RW1/E, copy of UPC and registered postal receipts as Ex.PW1/F & G and copy of letter dated 18-1-2000 as Ex.PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by

way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of mandays charts of Smt. Kusum Lata as Ex. RW1/I and Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No. 1	: No
Issue No. 2	: No
Issue No. 3	: Yes
Issue No. 4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Tilak Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had never worked for the period from the year 1985 upto the year 1990. He further denied that he was never disengaged by the department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of

their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Ex.PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma daily waged store clerk.

14. Ex.PW1/C is the copy of letter dated 18-12-1999 relating to Smt. Kusum Sharma.

15. Ex.PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 C.P.C.

16. Ex.PW1/E is the copy of letter dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

17. Ex.PW1/F is the copy of UPC dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

18. Ex.PW1/G is the copy of postal receipt.

19. Ex.PW1/H is the copy of letter dated 18-1-2000 regarding engagement of store clerk on daily wage basis.

20. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent No.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

21. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

22. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

23. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

24. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

25. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

26. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

27. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

28. Ex. RW1/I is the copy of working days of Smt. Kusum Sharma at Dalhousie Division.

29. Ex. RW1/J is the copy of working days of Smt. Kusum Lata of Nurpur Division.

30. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent no.1 in the year 1985 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1985 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1985 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those six years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1985 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

31. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

32. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

33. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

34. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

35. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

36. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 15th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 128/2017
Date of Institution : 21-06-2017
Date of Decision : 17-07-2019

Shri Rohit Kumar s/o Shri Jagat Ram, r/o Ward No.5, V.P.O. Jakhera, Tehsil & District Una, H.P. *..Petitioner.*

Versus

The Managing Director, M/s Froza Innovations Plot No.38, Industrial Area Mehatpur, Tehsil & District Una, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.
For the Respondent : Miss Prinka Chauhan, adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Rohit Kumar s/o Shri Jagat Ram, r/o Ward No.5, V.P.O. Jakhera, Tehsil & District Una, H.P. *w.e.f.* 14-10-2015 by the Managing Director, M/s Froza Innovations Plot No.38, Industrial Area Mehatpur, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged/appointed as a worker *w.e.f.* 2010-2011 by the respondent/management and had worked upto 13-10-2015. His work and conduct was fully satisfactory and upto the mark during the said period. No notice, charge-sheet or explanation of the petitioner had ever been called by the respondent. The petitioner had completed 240 days in each calendar year. On the basis of domestic inquiry, his services were illegally terminated by the respondent, without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The disciplinary/inquiry proceedings were against the principle of natural justice. No notice under Section 25-F of the Act had been served upon him. The respondent had not followed the principle of ‘last come first go’ as envisaged under Section 25-G of the Act. While recruiting new workers, the respondent had also violated the provisions of Section 25-H of the Act, as no opportunity of employment was afforded to him. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petitioner is estopped from filing the petition by his act and conduct. On merits, it is admitted that the petitioner had joined as a casual worker in the factory of the respondent on 28th March, 2011 and had worked upto 31st March, 2011. He had rejoined on 26th April, 2011 and had worked upto March, 2012 in different intervals. He had not completed 240 days in any calendar year. The petitioner had again joined the respondent’s factory on 1-1-2014 as a casual labour and had worked upto 31st March, 2014. On 13-10-2014, a circular/notice had been issued to the effect that the employees absenting themselves without prior permission would be penalized/deprived of double of their daily wages. It was signed by all the workers, except the petitioner. The petitioner had misbehaved with one of the partners of the unit/factory and had left the premises alongwith four other co-workers without any prior intimation. The petitioner had been asked to resume his duties *w.e.f.* 15-10-2015, but he did not adhere to it and had approached the Labour Inspector-cum-Conciliation Officer, Una. The services of the petitioner thereafter were terminated in accordance with law. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 28-5-2019:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 14-10-2015 is/was illegal and unjustified, as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*

(3) Whether the petitioner is estopped by his act, conduct and acquiescence to file the claim petition, as alleged? ..OPR.

(4) Whether the claim petition is not maintainable, as alleged? ..OPR.

Relief.

6. Arguments of the learned counsel for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: Not pressed
Relief	: Claim petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 2:

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2015 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a worker in the year 2010-2011. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for evidence of the petitioner for 17-7-2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 17-7-2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Although, it is an admitted case of the parties that the services of the petitioner were engaged as a worker, but as per the reference it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 14-10-2015 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led on record by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. No evidence of estoppel has been led by the respondent. Hence, this issue is answered in negative and against the respondent.

Issue No. 3:

19. Not pressed.

Relief:

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,

Kangra at Dharamshala, H.P. IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 129/2017
Date of Institution : 21-06-2017
Date of Decision : 17-07-2019

Shri Mohinder Singh s/o Shri Kewal Singh, r/o V.P.O. Dehlan Mohalla Budu, Tehsil & District Una, H.P. *..Petitioner.*

Versus

The Managing Director, M/S Froza Innovations Plot No.38, Industrial Area Mehatpur, Tehsil & District Una, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo
For the Respondent : Miss Prinka Chauhan, Adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Mohinder Singh s/o Shri Kewal Singh, r/o V.P.O. Dehlan Mohalla Budu, Tehsil & District Una, H.P. w.e.f. 14-10-2015 by the Managing Director, M/S Froza Innovations Plot No. 38, Industrial Area Mehatpur, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was

engaged/appointed as a worker in the year 2009 by the respondent/management and had worked upto 13-10-2015. His work and conduct was fully satisfactory and upto the mark during the said period. No notice, charge-sheet or explanation of the petitioner had ever been called by the respondent. The petitioner had completed 240 days in each calendar year. On the basis of domestic inquiry, his services were illegally terminated by the respondent, without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The disciplinary/inquiry proceedings were against the principle of natural justice. No notice under Section 25-F of the Act had been served upon him. The respondent had not followed the principle of 'last come first go' as envisaged under Section 25-G of the Act. While recruiting new workers, the respondent had also violated the provisions of Section 25-H of the Act, as no opportunity of employment was afforded to him. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petitioner is estopped from filing the petition by his act and conduct. On merits, it is admitted that the petitioner had joined as a casual worker in the factory of the respondent on 26th May, 2009 and had worked upto 24th July, 2009. He had rejoined on 18th February, 2010 and had worked upto March, 2012 in different intervals. He had not completed 240 days in any calendar year. The petitioner had again joined the respondent's factory on 1-1-2014 as a casual labour and had worked upto 31st March, 2014. On 13-10-2014, a circular/notice had been issued to the effect that the employees absenting themselves without prior permission would be penalized/deprived of double of their daily wages. It was signed by all the workers, except the petitioner. The petitioner had misbehaved with one of the partners of the unit/factory and had left the premises alongwith four other co-workers without any prior intimation. The petitioner had been asked to resume his duties *w.e.f.* 15-10-2015, but he did not adhere to it and had approached the Labour Inspector-*cum*-Conciliation Officer, Una. The services of the petitioner thereafter were terminated in accordance with law. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 28-5-2019:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 14-10-2015 is/was illegal and unjustified, as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is estopped by his act, conduct and acquiescence to file the claim petition, as alleged? ..*OPR.*
- (4) Whether the claim petition is not maintainable, as alleged? ..*OPR.*

Relief.

6. Arguments of the learned counsel for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: Not pressed
Relief	: Claim petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 2:

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2015 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a worker in the year 2009. It was also his claim that he had completed 240 days in each calendar year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for evidence of the petitioner for 17-7-2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to

be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

14. The State of Himachal Pradesh has also framed rules called "The Industrial Disputes Rules, 1974." Rule 25 thereof reads thus:—

"Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented."

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 17-7-2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Although, it is an admitted case of the parties that the services of the petitioner were engaged as a worker, but as per the reference it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 14-10-2015 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led on record by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. No evidence of estoppel has been led by the respondent. Hence, this issue is answered in negative and against the respondent.

Issue No. 3:

19. Not pressed.

Relief:

20. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 130/2017
Date of Institution : 21-06-2017
Date of Decision : 17-07-2019

Shri Amarjeet s/o Shri Lekh Raj, r/o Ward No. 5, V.P.O. Jakhera, Tehsil & District Una,
H.P. ..Petitioner.

Versus

The Managing Director, M/s Froza Innovations Plot No. 38, Industrial Area Mehatpur,
Tehsil & District Una, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Nemo.
For the Respondent : Miss Prinka Chauhan, adv.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Amarjeet s/o Shri Lekh Raj, r/o Ward No. 5, V.P.O. Jakhera, Tehsil & District Una, H.P. *w.e.f.* 14-10-2015 by the Managing Director, M/s Froza Innovations Plot No. 38, Industrial Area Mhatpur, Tehsil & District Una, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged/appointed as a worker in the year 2009 by the respondent/management and had worked upto 13-10-2015. His work and conduct was fully satisfactory and upto the mark during the said period. No notice, charge-sheet or explanation of the petitioner had ever been called by the respondent. The petitioner had completed 240 days in each calendar year. On the basis of domestic inquiry, his services were illegally terminated by the respondent, without complying with the provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). The disciplinary/inquiry proceedings were against the principle of natural justice. No notice under Section 25-F of the Act had been served upon him. The respondent had not followed the principle of ‘last come first go’ as envisaged under Section 25-G of the Act. While recruiting new workers, the respondent had also violated the provisions of Section 25-H of the Act, as no opportunity of employment was afforded to him. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability and that the petitioner is estopped from filing the petition by his act and conduct. On merits, it is admitted that the petitioner had joined as a casual worker in the factory of the respondent on 1st August, 2009 and had worked upto 31st March, 2010. He had rejoined on 4th May, 2010 and had worked upto March, 2012 in different intervals. He had not completed 240 days in any calendar year. The petitioner had again joined the respondent’s factory

on 1-1-2014 as a casual labour and had worked upto 31st March, 2014. On 13-10-2014, a circular/notice had been issued to the effect that the employees absents themselves without prior permission would be penalized/deprived of double of their daily wages. It was signed by all the workers, except the petitioner. The petitioner had misbehaved with one of the partners of the unit/factory and had left the premises alongwith four other co-workers without any prior intimation. The petitioner had been asked to resume his duties *w.e.f.* 15-10-2015, but he did not adhere to it and had approached the Labour Inspector-cum-Conciliation Officer, Una. The services of the petitioner thereafter were terminated in accordance with law. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Tribunal *vide* order dated 28-5-2019:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 14-10-2015 is/was illegal and unjustified, as alleged? ..OPP.
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (3) Whether the petitioner is estopped by his act, conduct and acquiescence to file the claim petition, as alleged? ..OPR.
- (4) Whether the claim petition is not maintainable, as alleged? ..OPR.

Relief.

6. Arguments of the learned counsel for the respondent heard and records gone through.

7. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: Negative
Issue No.3	: Negative
Issue No.4	: Not pressed
Relief	: Claim petition is dismissed as per the operative portion of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 2:

8. Being interlinked and to avoid repetition, both these issues are taken up together for discussion and disposal.

9. The statement of claim has been filed by the petitioner claiming that his services were illegally and unjustifiably terminated by the respondent in the year 2015 by violating the provisions of Sections 25-F, 25-G and 25-H of the Act. It was asserted that the petitioner had been engaged as a worker in the year 2009. It was also his claim that he had completed 240 days in each calendar

year. A plea was also taken to the effect that the respondent had not adhered to the principle of 'last come first go', as persons junior to the petitioner were retained and that fresh hands had also been engaged. It was also asserted that no opportunity was afforded to the petitioner for re-engagement. These averments were required to be established on record by the petitioner by way of ocular and/or documentary evidence.

10. However, when the case was listed for evidence of the petitioner for 17-7-2019, neither he nor his counsel had put in appearance before this Tribunal, despite the case being called several times since morning. Hence, despite due notice of the date of hearing, the petitioner had remained *ex parte*.

11. It will be apt at this stage to take note of the relevant provisions of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for brevity sake). Section 2 (b) of the Act defines the Award as under:—

“(b) “award” means an interim or a final determination of any industrial dispute or of any question relating thereto by any Labour Court, Industrial Tribunal or National Industrial Tribunal and includes an arbitration award made under Section 10A;”.

12. Sub-Section (1) of Section 11 of the Act provides that subject to any rules that may be made in this behalf, an arbitrator, a Board, Court, Labour Court, Tribunal or National Tribunal shall follow such procedure as the arbitrator or other authority concerned may think it fit. The Central Government has framed rules called “The Industrial Disputes (Central) Rules, 1957.” Rule 10-B (9) reads thus:—

“10-B (9) In case any party defaults or fails to appear at any stage the Labour Court, Tribunal, or National Tribunal, as the case may be, may proceed with the reference ex-parte and decide the reference application in the absence of the defaulting party.”

13. Rule 22 reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.— If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

14. The State of Himachal Pradesh has also framed rules called “The Industrial Disputes Rules, 1974.” Rule 25 thereof reads thus:—

“Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed ex-parte.—If without sufficient cause being shown, any party to the proceeding before a Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator fails to attend or to be represented, the Board, Court, Labour Court, Tribunal, National Tribunal or Arbitrator may proceed, as if the party had duly attended or had been represented.”

15. Rule 22 of the Industrial Disputes (Central) Rules, 1957 and Rule 25 of the Industrial Disputes Rules, 1974 authorize the adjudicating authority to proceed in the absence of a party. It creates a fiction which enables the Tribunal to presume that all the parties are present before it although, in fact, it is not true, and thus make an *ex parte* award. This Tribunal in these circumstances has to imagine that the absentee workman is present and having done so, can give full effect to its imagination and carry it to its logical end. Under Rule 25, this Tribunal, thus, has to

imagine that the workman is present, they are unwilling to adduce evidence or argue their case.

16. In the instant case, neither the petitioner nor his counsel had put in appearance before this Tribunal on 17.7.2019. In these circumstances, the Tribunal can proceed and pass *ex parte* award on its merits.

17. Although, it is an admitted case of the parties that the services of the petitioner were engaged as a worker, but as per the reference it was required of the petitioner to plead and prove on record that the termination of his services *w.e.f.* 14-10-2015 by the respondent was without complying with the provisions of the Act and, thus, illegal and unjustified. Though, a statement of claim has been filed by the petitioner, but his allegations therein have remained a mere saying on record, as no evidence in support thereof was led on record by him. At the risk of repetition, the petitioner had not put in appearance before this Tribunal. In this view of the matter, the petitioner is not entitled to any relief, as claimed for in the statement of claim. Hence, both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

18. No evidence of estoppel has been led by the respondent. Hence, this issue is answered in negative and against the respondent.

Issue No. 3:

19. Not pressed.

Relief:

20. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 180/2014
Date of Institution : 02-5-2014
Date of Decision : 17-7-2019

Shri Ravi Kumar s/o Shri Partap Chand, r/o Village and P.O. Biara, Tehsil Palampur,
District Kangra, H.P. ..Petitioner.

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Ravi Kumar s/o Shri Partap Chand, r/o Village and P.O. Biara, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Fodder department *w.e.f.* the year 2000 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the Fodder department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Fodder department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court *vide* Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of

the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during November, 2000, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had

the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on individual work contractor basis/unregistered contractor from November, 2000 uptil February, 2010. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*

- (4) Whether the petitioner has no locus standi to file the case as alleged? ..OPR.
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..OPR.
- (6) Whether the claim petition is not maintainable in the present form? ..OPR.
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..OPR.
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..OPR.
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Ravi Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I, copy of office order dated 19-7-2010 as Ex. PW1/J and copy of experience certificate as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/I, copy of award dated 30-6-2014 as Ex. RW1/J, copy of order dated 20-3-2014 as Ex. RW1/K, copy of letter dated 29-1-2011 as Ex. RW1/L, copy of certificate of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/O, copy of contract license dated 16-7-2014 as Ex. RW1/P, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes

Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Ravi Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-5 (now as Ex. RW1/D to Ex. RW1/H). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4.9.1986 regarding maintenance of casual

registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the experience certificate of the petitioner.

22. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

23. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

24. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2000 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

26. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

27. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

28. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D to Ex. RW1/I are the copies of contingent bills relating to the petitioner and others.

30. Ex. RW1/J is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

31. Ex. RW1/K is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

32. Ex. RW1/L is the copy of letter dated 29-1-2011 regarding registration of establishment.

33. Ex. RW1/M is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

34. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

35. Ex. RW1/O is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

36. Ex. RW1/P is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

37. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

38. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

39. Ex. RW1/S is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/T is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/U is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/V is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

43. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

44. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

45. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

46. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was

not an employee of the company but of some other person.

47. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/H. These along with Ex.RW1/I are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term "employees", excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/I, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex.PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

48. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2000 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a

daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

49. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172***. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

50. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

51. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

52. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker

by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

53. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

54. Not pressed.

Relief:

55. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 882/2016
Date of Institution	: 07-12-2016
Date of Decision	: 17-07-2019

Shri Subhash Singh s/o Shri Beli Ram, r/o V.P.O. Haddal, Tehsil Nurpur, District Kangra,
H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.

2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv.Vice
For the Respondents : Sh. B.C. Katoch A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

“Whether the alleged termination of services of Shri Subhash Singh s/o Shri Beli Ram, r/o V.P.O. Haddal, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D., Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the Labour Office Kangra at Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1985 in HPPWD Sub Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no.3 of the petition. The mates of the petitioner were S/Shri Satpal, Amri, Kalyan & Subhash. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July,

1994. It was denied that the petitioner had worked with the department from the year 1985 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Subhash Singh examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex.PW1/B, copy of letter dated 18-12-1999 as Ex.PW1/C, copy of notice dated 4-5-2002 as Ex.PW1/D, copy of resolution dated 18-7-2002 as Ex.RW1/E, copy of UPC and registered postal receipts as Ex.PW1/F & G and copy of letter dated 18-1-2000 as Ex.PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23.7.1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of mandays charts of Smt. Kusum Lata as Ex.RW1/I and Ex.RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1 : No

Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Subhash Singh examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 *vide* government notification No. PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1985 upto the year 1990. He denied that he had never worked for the period from the year 1985 upto the year 1990. He further denied that he was never disengaged by the department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Ex.PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma daily waged store clerk.

14. Ex.PW1/C is the copy of letter dated 18-12-1999 relating to Smt. Kusum Sharma.

15. Ex.PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 C.P.C.

16. Ex.PW1/E is the copy of letter dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

17. Ex.PW1/F is the copy of UPC dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

18. Ex.PW1/G is the copy of postal receipt.

19. Ex.PW1/H is the copy of letter dated 18-1-2000 regarding engagement of store clerk on daily wage basis.

20. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent no.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

21. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

22. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

23. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

24. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

25. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

26. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

27. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

28. Ex.RW1/I is the copy of working days of Smt. Kusum Sharma at Dalhousie Division.

29. Ex.RW1/J is the copy of working days of Smt. Kusum Lata of Nurpur Division.

30. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent no.1 in the year 1985 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department.

Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1985 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent No.2 even for a single day from the year 1985 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent No.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those six years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1985 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

31. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

32. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

33. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

34. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

35. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

36. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 866/2016
Date of Institution : 26-11-2016
Date of Decision : 17-07-2019

Shri Babu Ram s/o Shri Gur Ditta, r/o Village Farkunda, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. *..Petitioner.*

Versus

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P. *..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv. Vice
For the Respondents : Sh. B.C. Katoch, ADA

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Sh. Babu Ram, s/o Sh. Gur Ditta, r/o Village Farkunda, P.O. Aund, Tehsil Nurpur, district Kangra, H.P. by the (1) Executive Engineer, H.P.P.W.D. Jawali, District Kangra, H.P., and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during June/1990 who had worked on daily wages basis as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the office of Labour Officer Kangra at Dharamshala on 13-06-2011,

without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?’

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1976 in HPPWD Sub-Divisions-I and II, Nurpur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no.3 of the petition. The mates of the petitioner were S/Shri Bajee Singh and Chunni Lal. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is denied that the services of the petitioner had been engaged as beldar in the year 1976 in HPPWD Division, Nurpur. It is also denied that the petitioner was disengaged by the respondents in the year 1990. It is asserted that he was engaged as a daily wager by HPPWD Sub-Division Suliali, Division Jassur and had worked intermittently *w.e.f.* January, 1990 upto June, 1990. He had not completed 240 days in every calendar year. The petitioner thereafter had left the work of his own sweet will and had never approached the department. It is claimed that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification No. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It is denied that respondent No.1 had reengaged workers on 25-5-2010. Infact workers were reengaged by the respondents as per the orders of the Hon’ble High Court. It is admitted that HPPWD Divisions Nurpur and Jawali are involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. It is denied that a pick and choose policy had been adopted by the respondents. Neither any junior had been retained nor engaged by the respondent, so there was no violation of the provisions of Sections 25-G and 25-H of the Act. It is denied that the petitioner had made various requests and that assurances had been given to him by the respondents. After leaving the work in May, 1990, the petitioner had never approached the respondents and had raised the demand notice only in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of

claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 24-3-2018:—

- (1) Whether termination of services of the petitioner by the respondents during June, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Babu Ram examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex. PW1/B, copy of letter dated 18-12-1999 as Ex. PW1/C, copy of notice dated 4-5-2002 as Ex. PW1/D, copy of resolution dated 18-7-2002 as Ex. PW1/E, copy of UPC and registered postal receipts as Ex. PW1/F & G and copy of letter dated 18-1-2000 as Ex. PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of working days chart of Smt. Kusum Lata as Ex. RW1/I & Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Babu Ram (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

11. In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification no.PBW-(A)-A(1)17/94. He denied that he had not worked with the respondents. Volunteered that, he had worked regularly from the year 1976 uptil the year 1990. He denied that he had not worked from the year 1976 uptil December, 1989 and from July, 1990 upto December, 1990. He also denied that he had worked only for 151 days from January, 1990 uptil June, 1990. He further denied that no breaks had been given by the department. He also denied that he was never disengaged by the respondent/department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

12. Ex. PW1/B is the copy of letter dated 19-8-1998 regarding the posting of Smt. Kusum Sharma as a daily waged Store Clerk.

13. Ex. PW1/C is the copy of letter dated 18-12-1999 to the Chief Executive Engineer, HPPWD, US Club, Shimla by Smt. Kusum Lata.

14. Ex. PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 of CPC to The Secretary, HP Public Works Department, Government of Himachal Pradesh, Shimla.

15. Ex. PW1/E is the copy of letter dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh.

16. Ex. PW1/F is the copy of letter/UPC dated 18-7-2002 regarding issuance of muster rolls to the daily waged beldars from President, Him Shakti P.W.D. Karamchari Sangh, Nurpur, District Kangra, H.P. to the Finance Secretary, Government of Himachal Pradesh and others.

17. Ex. PW1/G is the copy of postal receipts.

18. Ex. PW1/H is the copy of letter dated 18-1-2000 from Chief Engineer, HPPWD, Shimla to Executive Engineer, HPPWD, 9th Circle, HPPWD, Nurpur.

19. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 uptil the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

20. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

21. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division

Nurpur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

22. In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

23. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

24. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

25. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

26. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

27. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

28. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

29. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

30. Ex. RW1/I is the copy of working days chart of Smt. Kusum Lata working under Banikhet Sub Division HPPWD Banikhet.

31. Ex. RW1/J is the copy of working days chart of Smt. Kusum Lata working under Suliali Sub Division HPPWD Suliali.

32. The version of the petitioner is that his services were engaged as a daily waged beldar by the respondents in the year 1976 and that he had worked as such uptil the year 1990. The respondents took the stand that the petitioner had been engaged as a daily waged beldar in HPPWD Sub Division Suliali w.e.f. January, 1990 and that he had worked intermittently uptil June, 1990. The petitioner denied this case of the respondents. He while under cross-examination categorically denied that he had not worked with the department from the year 1976 uptil December, 1999 and from July, 1990 uptil December, 1990. However, the respondents have place and proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. Its perusal discloses that the services of the petitioner were engaged by respondent No.2 in the month of January, 1990 for the first time as a daily waged beldar and he had worked as such uptil June, 1990. The claimant/petitioner has

not placed and exhibited on record any document to show that he had regularly worked with the respondents from the year 1976 upto December, 1990.

33. A plea was taken by the respondents that the petitioner had abandoned the work himself. It is well known that the abandonment has to be proved like any other fact by the respondent/employer. In *Eagle Hunter Solutions Ltd. vs. Sh. Prem Chand* reported in [2019 (160) FLR 16], it has been held by the Hon'ble Delhi High Court that burden of proving of abandonment is upon the management. Simply because a workman fails to report for duty, it cannot be presumed that he/she has left/abandoned the job. There is nothing on the record to show that a notice was served upon the petitioner by the respondents calling upon him to resume the duties. Absence from duty is a serious misconduct. Admittedly, no disciplinary proceedings were initiated against the petitioner by the respondents for his alleged willful absence from duty. Thus, the plea of abandonment put forth by the respondents/employers is not established.

34. No mandays chart of the petitioner is there on the file to establish that he had worked continuously for a period of 240 days in a block of 12 calendar months anterior to the date of his alleged termination, as envisaged under Section 25-B of the Act. As per the mandays chart Ex. RW1/H, the petitioner had only worked for 28 days, 12 days, 27 days, 30 days, 31 days and 23 days from January, 1990 upto June, 1990. Thus, in his total service for a period of about six months in between January, 1990 to June, 1990, he had only worked for 151 days. Therefore, the provisions of Sections 25-F and 25-N of the Act are not attracted in this case.

35. It is claimed by the petitioner that at the time of termination of his services, persons junior to him were retained in service by the respondents. A detail of such persons has been given in para 3 of the statement of claim. Shri Babu Ram (PW1) also named such persons to be junior to him in his chief-examination, being in the shape of affidavit Ex. PW1/A. The respondents, and in particular respondent no.1, refuted such allegations and claimed that no person junior to the petitioner had ever been retained in service by the respondents after his alleged termination. Significantly, no seniority list has been placed and exhibited on record or any other witness examined so as to show that the persons named in the statement of claim and in his affidavit by the petitioner were junior to him and who had been retained by the respondents at the time of the termination of his services. The statements of the witnesses examined by the petitioner as Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) are silent in this regard. There is also no whisper in their testimonies that persons junior to the petitioner are still in service. PW3 Shri Gian Chand claimed that his services were engaged by respondent no.1 in the year 1986, whereas, it is apparent from the record that the services of the petitioner as daily waged beldar for the first time were engaged by respondent no.2 in the month of January, 1990. So, as per the own testimony of this witness of the petitioner, he was senior to him. Shri Sukar Deen (PW2) claimed himself to have been engaged by respondent no.1 in the year 1986. He has not mentioned in his substantive evidence the date and month of his initial engagement. It is also not made out from his sworn testimony that he was junior to the petitioner. So, the testimonies of the aforesaid witnesses are of no help to the petitioner to establish on record that the principle of 'last come first go' had not been adhered to by the respondents. Then, no prayer had ever been made by the petitioner for the production of the seniority list from the respondents during the pendency of this case.

36. Faced with the situation, by referring to the copy of mandays chart pertaining to Smt. Kusum Lata which has been placed on record by respondent no.1 as Ex. RW1/J, it was contended by the learned Counsel for the petitioner that she is certainly junior to the petitioner, as she is shown to have been engaged in service in Suliali Sub Division, HPPWD Suliali in February, 2000. This cannot be accepted. Placed on record by respondent no.1 is another copy of mandays chart pertaining to said Smt. Kusum Lata as Ex. RW1/I. As per this document Smt. Kusum Lata had initially been engaged in the month of November, 1983 in Sub Division No.1 HPPWD, Banikhet

and that she had continued to work as such there upto November, 1988. Placed on record is also her representation to the Engineer-in-Chief, HPPWD Shimla, copy of which is Ex. RW1/F. On her representation, it is evident that she stood transferred and posted as a daily waged Store Clerk from 7th Circle HPPWD Dalhousie to 9th Circle HPPWD Nurpur. Reference in this regard can be made to the copy of letter dated 18-1-2000 of Engineer-in-Chief, HPPWD Shimla, Ex. RW1/G. On allotment of one post of Store Clerk in 9th Circle, HPPWD Nurpur, vide the aforesaid letter, Smt. Kusum Lata was adjusted as such there, where she has been working regularly from the year 2000 upto January, 2009, as is evident from the copy of her mandays days chart, Ex. RW1/J. So, she can also not be termed as a junior to the petitioner. There is nothing on record to show that the services of said Smt. Kusum Lata had ever been disengaged at any point of time. Rather she appears to have been working with the HPPWD Division Nurpur. Her joining in the 9th Circle HPPWD Nurpur, on her request in the month of February, 2000 cannot make her a junior to the petitioner, particularly when her year of joining is much prior to that of the petitioner in the HPPWD department i.e. she was engaged in the year 1983, whereas the petitioner, as discussed above, had initially been engaged in January, 1990. So, it cannot be said that Smt. Kusum Lata being a junior to the petitioner had been retained in service by the respondents. Therefore, it cannot be said that the respondents had violated the principle of 'last come first go', as envisaged in Section 25-G of the Act.

37. It is not the case of the petitioner that after his alleged disengagement, new/fresh hands have been engaged by the respondents. That being so, the provisions of Section 25-H of the Act are also not attracted in this case.

38. In view of the discussion and findings aforesaid, the petitioner is held to be not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

39. Taking into account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered accordingly. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 899/2016
Date of Institution : 24-12-2016
Date of Decision : 17-07-2019

Shri Tuffail s/o Shri Shaheed Deen, r/o Village and P.O. Aund, Tehsil Nurpur, District Kangra, H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
2. The Executive Engineer, HPPWD Division, Jawali, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv.Vice
For the Respondents : Sh. B.C. Katoch A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Sh. Tuffail s/o Sh. Shaheed Deen, r/o Village and P.O. Aund, Tehsil Nurpur, Distt. Kangra, H.P. by (1) Executive Engineer, H.P.P.W.D., Jawali, District Kangra, H.P., and (2) the Executive Engineer, HPPWD Nurpur, Distt. Kangra, H.P. during the year, 1990 who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the Labour Office Dharamshala on 29-11-2012, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during February, 1987 in HPPWD Sub-Divisions-I and II, Nurpur/Jassur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the reengaged employees as detailed in para no.3 of the petition. The mates of the petitioner were Shri Thudu Ram and Shri Diwan. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25.5.2010. After his oral termination, many verbal requests were made by the petitioner to the department and he

was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retrenchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1987 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018: —

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Tuffail examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex.PW1/B, copy of letter dated 18-12-1999 as Ex.PW1/C, copy of notice dated 4-5-2002 as Ex.PW1/D, copy of resolution dated 18-7-2002 as Ex.RW1/E, copy of UPC and registered postal receipts as Ex.PW1/F & G and copy of letter dated 18-1-2000 as Ex.PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit

Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of mandays charts of Smt. Kusum Lata as Ex. RW1/I and Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Tuffail examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification no.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1987 upto the year 1990. He denied that he had never worked for the period from the year 1987 upto the year 1990. He further denied that he was never disengaged by the department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 upto the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had

obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Ex.PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma daily waged store clerk.

14. Ex.PW1/C is the copy of letter dated 18-12-1999 relating to Smt. Kusum Sharma.

15. Ex.PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 C.P.C.

16. Ex.PW1/E is the copy of letter dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

17. Ex.PW1/F is the copy of UPC dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

18. Ex.PW1/G is the copy of postal receipt.

19. Ex.PW1/H is the copy of letter dated 18-1-2000 regarding engagement of store clerk on daily wage basis.

20. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurgur (respondent no.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurgur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurgur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurgur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

21. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

22. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurgur and its functioning at Jawali, HPPWD Jawali Division.

23. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

24. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

25. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

26. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

27. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

28. Ex. RW1/I is the copy of working days of Smt. Kusum Sharma at Dalhousie Division.

29. Ex. RW1/J is the copy of working days of Smt. Kusum Lata of Nurpur Division.

30. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent no.1 in the year 1987 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1987 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent no.2 even for a single day from the year 1987 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he had never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent no.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those four years, the period for which he claims to have worked with respondent no.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1987 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

31. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

32. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

33. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

34. Taking in to account my findings on issues no. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

35. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

36. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

—————
**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)
(CAMP AT MANDI)**

Ref No. : 83/2015
Date of Institution : 25-2-2015
Date of Decision : 17-7-2019

Shri Janki Dass s/o Shri Relu Ram, r/o Village Richhali, P.O. Dhwali, Tehsil Sarkaghat,
District Mandi, H.P. *..Petitioner.*

Versus

The Director, Rural Development Department, Himachal Pradesh, Shimla-9. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.K. Sharma, Adv.
For the Respondent(s) : Sh. Naveen Chander, Dy. D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the demand of Janki Dass s/o Shri Relu Ram, r/o Village Richhali, P.O. Dhawali, Tehsil Sarkaghat, District Mandi, H.P. through Himachal Pradesh Lok Nirman Vibagh Majdoor Ekta Union affiliated with CITU Mandal Committee Dharampur, regarding regularization of his daily wages services from the date his similar situated workmen have been regularized, (as alleged by the workman) as per Government Policy to be fulfilled by the Director, Rural Development Department, Himachal Pradesh, Shimla-9, is legal and justified? If yes, to what relief, service benefits above workman is entitled to from the above employer?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that he was initially engaged on daily wages as a Driver on 24-6-1998. He worked continuously as such upto 16-3-1999 and his services had been disengaged on 17-3-1999. He had approached the Hon'ble Administrative Tribunal, Shimla and it had disposed of the petition, whereby the petitioner was ordered to be re-engaged. In compliance of the said order the petitioner was re-engaged vide order dated 26-8-1999 and he had joined the duties on 1-9-1999 in the office of the Block Development Officer, Naggar, District Kullu, H.P. He had worked there as such and his services were dispensed with by the Chief Executive Officer, District Rural Development Agency, Kullu-cum-Deputy Commissioner on 30th April, 2004. The petitioner had again approached the Hon'ble Administrative Tribunal, Shimla and it had disposed of the petition on 24th May, 2004, whereby the original application was ordered to be treated as a representation by Director of Rural Development, who was to decide the same within six weeks. As a sequel thereto, the Director had rejected the representation of the petitioner. He issued a demand notice. State government after the receipt of the failure report from the Conciliation Officer, made a reference to this Court and by virtue of an award dated 24-7-2010 passed by this Court, the petitioner had been directed to be re-engaged alongwith seniority and continuity in service from the date of his illegal termination, except for the back wages. The petitioner had thereupon rejoined at Development Block, Dharampur, as per order dated 22-3-2011 of the respondent. At present he is serving as a driver on daily waged basis in the office of Block Development Officer, Dharampur. Various requests were made by the petitioner to the respondent for regularization, but without success. It is further averred that innumerable representations were made by the petitioner to the department for his regularization, but were rejected. Services of similarly situated seven daily waged drivers have been regularized *w.e.f.* 7-8-2007. One Shri Ramesh Kumar a daily wager had been regularized on 19-6-2015. The petitioner thus prays that he be directed to be regularized from the date his similarly situated workmen were regularized alongwith all consequential benefits.

3. The respondent while contesting the claim has raised a preliminary objection regarding lack of maintainability.

On merit it is the contention of the respondent that the respondent had rightly refused the claim of the petitioner. His services had been dispensed with on the ground of alleged misconduct. He was not entitled for the regularization of his services in view of letter dated 6-10-2015 alongwith copy of Under Secretary (Personnel) dated 16-1-2012, Special Secretary (Finance-Exp.) dated 30-11-2011 and letter of ALR-cum-Under Secretary Law (O) dated 25-2-2012. It was admitted that the services of the persons mentioned in para 8 of the claim petition and that of Shri Ramesh Kumar had been regularized. The respondent, thus, prayed for the dismissal of the reference.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply

and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 23-4-2016:—

- (1) Whether the demand raised by petitioner qua regularization of his daily wages services from the date his similar situated workmen have been regularized is/was improper and unjustified as alleged? ..*OPP*.
- (2) If issue no.1 is proved in affirmative, to what service benefits petitioner is entitled to? ..*OPP*.
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Janki Dass appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A. The respondent examined one Shri Gunjeet Singh Cheema as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of letter dated 22-3-2011 as Ex.RW1/B, copy of letter dated 3-5-2012 as Ex.RW1/C and copy of letter dated 19-12-2012 as Ex.RW1/D.

7. Arguments of the learned counsel for the petitioner and the learned Deputy District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: No
Relief	: Petition is allowed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. It is not disputed that the petitioner had been re-engaged and the consequential benefits including seniority and continuity in service from the date of his illegal termination, except for back wages had been granted to him as per the Award passed *vide* Reference No.100/2006. Thus, the petitioner was relegated to the position as if he had been appointed *w.e.f.* 24th June, 1998.

11. Though, the respondent claimed that the services of the persons as find mentioned in para 8 of the statement of claim and one Shri Ramesh Kumar have been regularized, but it was claimed that the petitioner was not entitled for regularization of his service.

12. Shri Gunjeet Singh Chimma, Block Development Officer, Dharampur, who has

appeared as RW1 has admitted in unequivocal terms that the department has not given the seniority to the petitioner as per the Award passed by the Court. He volunteered to state that the case had been referred to the higher authorities and as per their directions the Award was implemented in case of the petitioner. He also clearly admitted that Ex.RA to Ex.RK have been issued by their department. He specifically admitted that the workers reflected in Ex.RA are junior to the petitioner.

13. Ex.RA shows that the services of Shri Mahinder Singh were regularized on 29-1-2009, that of Sh. Shyam Lal on 10-2-2009, of Shri Pritam Singh on 23-10-2009, Shri Surinder Kumar on 27-10-2009, that of S/Shri Bharat Kumar and Dharam Pal on 4-8-2007 respectively and of Shri Bhag Mal on 3-10-2007. Admittedly, all the above named persons are working as drivers. The petitioner was also engaged as a driver. Tacitly, the respondent admitted that the seniority of the petitioner is to be reckoned over and above S/Shri Mahinder Singh, Shyam Lal, Pritam Singh, Surinder Kumar, Bharat Kumar, Dharam Pal and Bhag Mal.

14. It is more than apparent that persons junior to the petitioner have already been regularized in the years 2007 and 2009 respectively. Two of his juniors, namely, S/Shri Bharat Kumar and Dharam Pal were regularized on 4-8-2007. That being so and by virtue of the Award passed by this Court earlier, the seniority and continuity of the petitioner had to be reckoned *w.e.f.* 24-6-1998. The petitioner, thus, was to be regularized alongwith his juniors. Admittedly, the petitioner was not working as a driver with the respondent/department at the relevant time, but by fiction of law he will be deemed to have been in service at the relevant time. The respondent/department was, thus, to regularize the petitioner on notional basis from the said date and he would be deemed to have been regularized *w.e.f.* 4-8-2007, the date on which, as per the discussion above, his two juniors named S/Shri Bharat Kumar and Dharam Pal were regularized. On the contrary, while issuing Ex.RW1/D the petitioner had been ordered to be re-engaged *w.e.f.* 22-3-2011 and that on the completion of eight years of service from the said date, he was to be regularized, whereas the respondent/department had to pass an order that the petitioner shall be deemed to have been regularized alongwith his two juniors *w.e.f.* 4-8-2007. The said order had to be passed on notional basis, as on that date the petitioner was not working with the respondent/department. Needless to reiterate that no back wages and pecuniary benefits were to accrue to the petitioner in this behalf. Though, the services of persons junior to the petitioner have been regularized since long, *i.e.* with effect from the years 2007 and 2009 respectively, but the regularization of the services of the petitioner were ordered to take effect on completion of eight years from 22-3-2011, the date on which he was re-engaged, as is clear from Ex.RW1/D on record. To my mind, the respondent/department has wrongly interpreted the earlier Award passed by this Court. The petitioner having completed eight years of continuous service as a daily wager, with minimum of 240 days in a calendar year was liable to be regularized *w.e.f.* 4-8-2007. The action contrary to the same is illegal, arbitrary and against the earlier Award passed by this Court. The action of the respondent was, thus, not proper and justified as per law.

15. It is, thus, held that the action of the respondent/department in not regularizing the petitioner *w.e.f.* 4-8-2007 on notional basis is illegal. Consequently, the respondent/department is directed that the petitioner shall be deemed to have been regularized *w.e.f.* 4-8-2007, as two juniors to him have been regularized from the said date. Both the issues are decided accordingly.

Issue No. 3:

16. In view of what has been held under the foregoing issues, the petition is perfectly maintainable to the extent the same relates to the relief the petitioner is found entitled to. Even otherwise, nothing has been brought to my notice, as to why the reference is not maintainable. This issue on hand is accordingly held in favour of the petitioner and against the respondent.

Relief:

17. For the foregoing reasons discussed hereinabove, the reference is allowed. Consequently, the petitioner shall be deemed to have been regularized on 4-8-2007, *i.e.* the date on which two of his juniors named S/Shri Bharat Kumar and Dharam Pal were regularized. Since, the petitioner was not on the rolls of the respondent/department, the regularization shall be notional. The petitioner shall, however, not be entitled to any pecuniary benefits arising thereto. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 17th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 181/2014
Date of Institution : 02-5-2014
Date of Decision : 18-7-2019

Shri Avinash Kumar s/o Shri Pritam Chand, r/o Village Amtrar, P.O. Lilly, Tehsil & District Kangra, H.P. *..Petitioner.*

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Avinash Kumar s/o Shri Pritam Chand, r/o Village Amtrar, P.O. Lilly, Tehsil and District Kangra, H.P. by the Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agriculture Engineering department *w.e.f.* October, 1995 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the Agriculture Engineering department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agriculture Engineering department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis

or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on fixed salary basis from 1999 uptil 2000 and thereafter on individual work contract basis from the year 2001 uptil the year 2008, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on individual work contractor basis/unregistered contractor from the year 2001 uptil the year 2008. He raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work.

The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent w.e.f. March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Avinash Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex.

PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/I18, copy of award dated 30-6-2014 as Ex. RW1/J, copy of order dated 20-3-2014 as Ex. RW1/K, copy of letter dated 29-1-2011 as Ex. RW1/L, copy of certificate of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/O, copy of contract license dated 16-7-2014 as Ex. RW1/P, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKV, Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Avinash Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any

objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-14 (now as Ex. RW1/D to Ex. RW1/I18). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 1995.

Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 1995 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/I18 are the copies of contingent bills relating to the petitioner and others.

29. Ex. RW1/J is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/K is the copy of order dated 20-3-2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/L is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/M is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/O is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/P is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayata Security Services, Pvt. Ltd.

37. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/S is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/T is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In ***Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514***, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/I18. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which

defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex.RW1/D to Ex. RW1/I, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 1995 upto April, 2010, without any breaks. No such record has been seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking into account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5 :

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala,
H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 879/2016
Date of Institution : 07-12-2016
Date of Decision : 18-07-2019

Shri Hanif s/o Shri Roj Deen, r/o Village Nihad, P.O. Aund, Tehsil Nurpur, District Kangra,
H.P. ..Petitioner.

Versus

1. The Executive Engineer, H.P.P.W.D., Division, Nurpur, District Kangra, H.P.
 2. The Executive Engineer, H.P.P.W.D. Division, Jawali, District Kangra, H.P.
- ..Respondents.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. Mukul Vaid, Adv.Vice
For the Respondents : Sh. B.C. Katoch A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether the alleged termination of services of Shri Hanif s/o Shri Roj Deen, r/o Village Nihad, P.O. Aund, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (i) the Executive Engineer, H.P.P.W.D. Division Nurpur, District Kangra, H.P. (ii) the Executive Engineer, H.P.P.W.D., Division Jawali, District Kangra, H.P., who had worked on daily wages as beldar and has raised his industrial dispute after about 21 years vide demand notice dated nil received in the Labour Office Dharamshala on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, keeping in view delay of about 21 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employers/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he was engaged by Himachal Pradesh Public Works Department on daily basis during the year 1978 in HPPWD Sub-Divisions-I and II, Nurpur/Jassur and had worked as such upto the year 1990. He had completed 240 days in twelve calendar months from the date of his retrenchment and many juniors were retained. HPPWD Division Nurpur was involved in the construction and maintenance of roads, building and bridges, besides the repair and maintenance of tools and plants etc. and the patch work of metalled roads. The petitioner had worked for the preparation of roads with many juniors, retained by the employer and also with the re-engaged employees as detailed in para No.3 of the petition. The mates of the petitioner were S/Shri Baldev and Mohinder. More than 1000 workers were engaged for a number of years by HPPWD Division Nurpur and in the year 1990 a pick and choose policy was adopted and the petitioner alongwith some other daily waged workers were retrenched on the false assurance that they would be retained after some time, declaring them surplus. Respondent no.1 had illegally terminated/retrenched the services of the petitioner in the year 1990 and the juniors mentioned in para 3 of the petition were reengaged on 25-5-2010. After his oral termination, many verbal requests were made by the petitioner to the department and he

was being given the assurance that he would be engaged after three or four months. When nothing was heard from the side of the department, the petitioner had communicated in writing for his reengagement on daily wage basis, but without success. The action of the employer in orally terminating the services of the petitioner is violative of the provisions of Section 25-F of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). No notice was served upon him. The provisions of Sections 25-G, 25-H and 25-N of the Act have also been violated. The petitioner is having no source of income and is unemployed since his disengagement, hence he is entitled to full back wages, as his termination/retranchment is illegal and arbitrary. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondents appeared. They filed a joint reply taking preliminary objections, regarding lack of maintainability and that the petition was bad on the grounds of delay and laches. On merits, it is admitted that HPPWD Division Jassur was shifted/re-named as HPPWD Division Jawali vide HP Government Notification no. PBW-(A)-A (I) 17/1994 dated 21st July, 1994. It was denied that the petitioner had worked with the department from the year 1978 upto the year 1990. It was asserted that the petitioner had never been engaged by the respondents so the question of completing 240 days did not arise. It is admitted that HPPWD Division Nurpur was involved in the construction and maintenance of roads, buildings and bridges, repair and maintenance of tools and plants etc. Since, the petitioner had never been engaged by the respondents, so the question of violation of the provisions of Section 25-B does not arise. It was denied that juniors to the petitioner had been engaged by the respondents. However, claimed that when some workers had been engaged by the respondents as per the directions of the Hon'ble High Court only then the demand notice was issued by the petitioner in the year 2011, *i.e.* after about 21 years. The respondents, thus, pray for the dismissal of the claim.

4. In the rejoinder, the petitioner has reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondents.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 24-3-2018: —

- (1) Whether termination of services of the petitioner by the respondents during year, 1990 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (4) Whether the claim petition is bad on the ground of delay and laches as alleged. If so, its effect? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Hanif examined himself as PW1 and also examined Shri Sukar Deen (PW2) and Shri Gian Chand (PW3) as his witnesses. Besides this the petitioner tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 19-8-1998 as Ex.PW1/B, copy of letter dated 18-12-1999 as Ex.PW1/C, copy of notice dated 4-5-2002 as Ex.PW1/D, copy of resolution dated 18-7-2002 as Ex.RW1/E, copy of UPC and registered postal receipts as Ex.PW1/F & G and copy of letter dated 18-1-2000 as Ex.PW1/H. The respondents examined one Shri Dinesh Kumar Dhiman as RW1, who tendered his statement by way of affidavit

Ex. RW1/A and placed on the file copy of notification dated 21st July, 1994 as Ex. RW1/B, copy of office order dated 23-7-1994 as Ex. RW1/C, copy of office order dated 29-11-2010 as Ex. RW1/D, copy of letter dated 19-8-1998 as Ex. RW1/E, copy of application dated 18-12-1999 filed by Smt. Kusum Lata as Ex. RW1/F, copy of letter dated 18-1-2000 as Ex. RW1/G, copy of mandays chart of the petitioner as Ex. RW1/H and copies of mandays charts of Smt. Kusum Lata as Ex. RW1/I and Ex. RW1/J.

7. Arguments of the learned Counsel for the petitioner and the learned Assistant District Attorney for the respondents heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: No
Issue No.2	: No
Issue No.3	: Yes
Issue No.4	: Not pressed/redundant
Relief	: Claim petition dismissed <i>vide</i> operative portion of the Award.

REASONS FOR FINDINGS

Issue No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Hanif examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that before 1994, HPPWD Division was at Jassur. He admitted that HPPWD Division Jawali was established on 21st July, 1994 vide government notification no.PBW-(A)-A(1)17/94. He admitted that he had never worked in Jawali Division. Volunteered that, he had worked in Nurpur Division. He denied that he had not worked in Nurpur Division. He also denied that he had never worked with the respondents. Self stated that, he had worked regularly from the year 1978 uptil the year 1990. He denied that he had never worked for the period from the year 1978 uptil the year 1990. He further denied that he was never disengaged by the department. It was also denied by him that no juniors to him had been kept. He feigned ignorance that Smt. Kusum Lata was appointed as a daily waged beldar in HPPWD Division Dalhousie in the year 1983. He denied that he had never worked for 240 days and above in any year. However, he admitted that he owns land, which he cultivates. He also admitted that he is doing days' drudgery privately. Self stated that, as and when the work is available.

11. PW2 Shri Sukar Deen testified that he had worked as beldar from the year 1986 uptil the year 2016 in HPPWD Division, Nurpur. He knows the petitioner, who had also been working with them in the department. He denied in the cross-examination that the petitioner had never worked in the department.

12. PW3 Shri Gian Chand stated that he was engaged in the year 1986 as a Mate in HPPWD Division, Nurpur. He was removed by the department in the year 1990, when he had obtained a stay from the H.P. Administrative Tribunal. Thereafter, he was again kept at work. He

knows the petitioner, who had also worked with them in the department. He was also a member of their union. In the cross-examination, he was categorical that the petitioner had never worked with him. Volunteered that, he had worked in the other section.

13. Ex.PW1/B is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma daily waged store clerk.

14. Ex.PW1/C is the copy of letter dated 18-12-1999 relating to Smt. Kusum Sharma.

15. Ex.PW1/D is the copy of letter dated 4-5-2002 regarding notice under Section 80 C.P.C.

16. Ex.PW1/E is the copy of letter dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

17. Ex.PW1/F is the copy of UPC dated 18-7-2002 issued by Him Shakti PWD Karamchari Sangh.

18. Ex.PW1/G is the copy of postal receipt.

19. Ex.PW1/H is the copy of letter dated 18-1-2000 regarding engagement of store clerk on daily wage basis.

20. Conversely, Shri Dinesh Kumar Dhiman, Executive Engineer, HPPWD, Division Nurpur (respondent no.1) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondents.

In the cross-examination, he admitted that when the workers had been removed from HPPWD Division, Nurpur in the year 1990, he was not working in any capacity in this Division. He also admitted that in HPPWD Nurpur the works of road repair, maintenance, patch work and widening are done continuously. He admitted that the work increases during the monsoons. He further admitted that the persons named in para 3 of the claim petition, in para 2 of the affidavit of the petitioner and as shown in Ex. RW1/D are still working with HPPWD Division, Nurpur. He cannot say that when 24 workers were removed, any notice under Section 25-F was issued or not. Self stated that, they had left the work of their own. No other worker had been kept at work after 29-11-2010, except for those shown in Ex. RW1/D. He denied that wrong mandays of the petitioner has been given.

21. Ex. RW1/B is the copy of notification dated 21st July, 1994 with regard to the shifting of HPPWD Division Jassur to Jawali along-with sanctioned strength and staff.

22. Ex. RW1/C is the copy of Office Order dated 23-7-1994 regarding the closure of HPPWD Jassur Division at Nurpur and its functioning at Jawali, HPPWD Jawali Division.

23. Ex. RW1/D is the copy of another Office Order dated 29-11-2010 with regard to implementation of the award of this Court dated 22-12-2007.

24. Ex. RW1/E is the copy of letter dated 19-8-1998 regarding posting of Smt. Kusum Sharma as daily waged store clerk.

25. Ex. RW1/F is the copy of letter dated 18-12-1999 regarding representation of Smt. Kusum Lata.

26. Ex. RW1/G is the copy of letter dated 18-1-2000 written by the Engineer-in-Chief HPPWD Shimla to The Superintending Engineer, 9th Circle, HP HPPWD, Nurpur relating to the engagement of Store Clerk on daily waged basis.

27. Ex. RW1/H is the copy of mandays chart pertaining to the petitioner.

28. Ex. RW1/I is the copy of working days of Smt. Kusum Sharma at Dalhousie Division.

29. Ex. RW1/J is the copy of working days of Smt. Kusum Lata of Nurpur Division.

30. The version of the petitioner is that his services were engaged as a daily waged beldar by respondent no.1 in the year 1978 and that he had worked as such upto the year 1990. It was the stand taken by the respondents that the petitioner had never been engaged by the department. Although, the petitioner (PW1) in his cross-examination denied the fact that he had never been engaged as a daily waged beldar in the year 1978 by the respondents and that he had not worked as such upto the year 1990, but, however, respondent no.1 has proved on record the mandays chart pertaining to the petitioner as Ex. RW1/H. This mandays chart pertains to HPPWD Division Jawali. Its perusal reveals that the petitioner had not worked with respondent no.2 even for a single day from the year 1978 upto the year 1990. The petitioner in his substantive evidence also clearly admitted that he had never worked in Jawali Division. No mandays chart has been proved on record by the petitioner showing him to have ever worked with respondent no.1. In view of this fact, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that there existed a relationship of employer and employee/workman in between the parties. Although, witnesses, namely, Shri Sukar Deen (PW2) and Shri Gian Chand (PW3), were examined by the petitioner in support of his case, but I find that their statements are of no help to him, as their service records were not brought on record to show that they had ever been engaged by the department. Then, it is nowhere the case of the petitioner that he had ever marked his attendance in all those thirteen years, the period for which he claims to have worked with respondent No.1. Had there been any attendance register in which the petitioner had appended his signatures, he ought to have placed and exhibited on record the same so as to show that his services had been engaged by the respondents from the year 1978 upto the year 1990. But, so is not the case here. No such attendance register has seen the light of the day, nor any prayer had been made by the petitioner for the production of the same from the respondents during the pendency of this case. Further, he could have easily proved the muster rolls for the period for which he had worked. But, no such muster roll has been produced. Even no appointment letter to show that the services of the petitioner had been engaged by the respondents, has been placed on record by him.

31. From the ocular and documentary evidence of the respondent available on record, it can be gathered that the petitioner had never been appointed in any capacity at any point of time by the respondents.

32. Since, there is no cogent, convincing and reliable evidence on the file establishing the relationship of employer and employee/workman in between the petitioner and the respondents, therefore, the provisions of Section 25-F of the Act are not attracted in this case. The respondents can also not be held to have violated the provisions of Sections 25-G, 25-H and 25-N of the Act, as the relationship of the petitioner and the respondents being that of a workman and employer stands not established on record.

33. In view of the discussion and findings aforesaid, it appears to me that the avarice of the petitioner to grab government job and money had forced him to file a totally false and baseless claim. He is not entitled to any relief. Hence, both these issues are decided against the petitioner and in favour of the respondents.

Issue No. 3:

34. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondents and against the petitioner.

Issue No. 4:

35. Not pressed. Even otherwise, the plea of delay and laches would have been relevant had the petitioner been able to prove the demand notice as well as the fact of he being a workman under the respondents for the alleged period. Hence, this issue becomes redundant.

Relief:

36. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition being meritless, not maintainable and malafide, fails. It is, therefore, dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 18th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 196/2014
Date of Institution : 03-5-2014
Date of Decision : 19-7-2019

Smt. Dehro Devi w/o Shri Rajinder Kumar, r/o V.P.O. Banuri, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Smt. Dehro Devi, w/o Shri Rajinder Kumar, r/o V.P.O. Banuri, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya Palampur, District Kangra, H.P. or by concerned Contractor, as alleged by above employer during March/April, 2010, without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer(s)/University?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged by the respondent as a daily waged worker on daily rated basis in Tea Husbandry department *w.e.f.* the year 2002 and she continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, her attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the department of Tea Husbandry department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to her by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to her at the time of her appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Tea Husbandry department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow her and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against her. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference No. 207/2010. It was accepted by the President of the union and application No. 25/2011 was withdrawn by the union. Reference No. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, she had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012.

After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31.3.2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During her services, the petitioner had worked under the control and supervision of the project investigator and he had only been making the payments to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla her attendance was marked by the Field Assistant of Tea Husbandry department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd. had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. She was engaged on work contract basis during November, 2003, for which she has been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. Her wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to her from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, her name would have figured in the seniority list of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and her services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at her own will. She had worked

on Individual Work Contractor basis/unregistered contractor from November, 2003 to January, 2009. She raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner herself had refused to work under the registered contractor during the year 2010. She only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, she had worked in other similar projects from time to time. She is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*

- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Dehro Devi appeared as PW1 and tendered in evidence her statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificate of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/I, copy of award dated 30-6-2014 as Ex. RW1/J, copy of order dated 20-3-2014 as Ex. RW1/K, copy of letter dated 29-1-2011 as Ex. RW1/L, copy of certificates of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license dated 27-7-2011 as Ex. RW1/O, copy of contract license dated 16-7-2014 as Ex. RW1/P, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12.5.2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X and copy of statutes of CSKHPKVV Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Smt. Dehro Devi examined herself as PW1 and filed her

affidavit in evidence, which is exhibited as Ex. PW1/A. In her affidavit, she reiterated the contents of her statement of claim. She also filed certain documents purportedly in support of her claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, she admitted that she has not filed any document showing her to be a daily wager. She also admitted that in the muster roll names of different categories of workers are mentioned. She further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, she admitted that it does not bear her name. She also specifically admitted that her name also does not figure in the final seniority list, Ex.R-2. Though, she denied that she had not raised any objection regarding the seniority list and has volunteered to state that she had raised an objection with the VC, but she had to admit that no such document has been placed on record by her. It was also admitted by her that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. She clearly admitted her signatures on Mark-RA-1 to Mark-RA-6 (now as Ex. RW1/D to Ex. RW1/I). She is working in the department on contingency. She denied that she is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex.PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKVV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18 Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2002. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, she was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2002 upto the year 2010, the petitioner had worked for 240 days in each year and that her mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/G are the copies of contingent bills relating to the petitioner and others.

29. Ex. RW1/J is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/K is the copy of order dated 20-3-2014 passed in Reference No. 207/2010 by this Court.

31. Ex. RW1/L is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/M is the copy of certificate of registration dated 29.1.2011 which corresponds to Ex. PW2/A.

33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/O is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/P is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/S is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/T is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which she had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between herself and the respondent. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that her name did not find mention in these seniority lists. No reason has been assigned by her as to why her name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, she claimed that an objection had been raised before the Vice Chancellor, but her such self serving statement is in air,

as no document regarding the raising of objection against the seniority list has seen the light of the day. The petitioner clearly admitted that she had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner herself clearly admitted her signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/I. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that she was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishwavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by her that she was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. No muster roll in her name has been placed and exhibited on record by the petitioner. This only goes to show that she had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/I, nowhere reflect that the petitioner was a daily paid worker. She had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that she was appointed or engaged in the year 2002 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that she was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that she had worked continuously with the respondent from the year 2002 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, her name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in her name. No muster roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that she had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on her part that as provided under Section 25-B of the Act, she had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that she had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that she had continuously worked for a period of 240 days in a calendar year, her submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed

reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors.*** 1996 SCC (L&S) 1273; ***State of Himachal Pradesh and others vs. Bhatag Ram and Anr.*** Latest HLJ 2007 (HP) 903 and ***Basanti Devi and others vs. State of Jharkhand and Ors.*** 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors.*** 2011 (131) FLR 759 and ***Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1,*** 2010 LLR 1165, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that she had been appointed through a licensed/unlicensed contractor, so that she could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others,*** 2015 LLR 974, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers ,*** 2008 LLR 509, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that she had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so she cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that she was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding her work, nor her name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show her name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, she is not entitled to any relief as claimed for by her. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 172/2017
Date of Institution : 08-8-2017
Date of Decision : 19-07-2019

Smt. Sheela Devi w/o Shri Bhukar Singh, r/o Village and Post Office Tanihar, Sub Tehsil Tihra, District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether the termination of services of Smt. Sheela Devi w/o Shri Bhukar Singh, r/o Village and Post Office Tanihar, Sub Tehsil Tihra, District Mandi, H.P. from time to time during year, 1994 to 2013 and finally terminated during July, 2013 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and

justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on daily waged basis in the year 1994. She worked under the supervision of Forest Range Officer, Kamlah upto the year 2013. The latter used to disengage her services without any written order so that she could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The services of the petitioner had been finally terminated by the respondent in July, 2013. Fictional breaks were given by the respondent from the year 1994 upto the year 2013. It is also asserted that while terminating the services of the petitioner in the year 2013, the respondent had not followed the principle of 'last come first go', as persons junior to her, namely, S/Sh./Smt. Chaman Lal, Love Kumar, Nirmla Devi, Shyam Singh and Sheela Devi w/o Shri Hari Ram were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. She had raised a demand notice on 26-8-2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was denied that the petitioner was engaged in the year 1984. It was claimed that she had been engaged in the year 1987 and that she had worked as such upto the year 2013 on bill voucher basis. At the time of termination of services of the petitioner, she had completed more than 240 days. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable. The contents of the petition were denied on merits. However, it was admitted that the petitioner was initially engaged as a casual labourer in the department in the month of August, 2008 on seasonal forestry works, as per the availability of work and funds. She had worked intermittently on muster rolls basis for 13 days in August, 2008, 12 days in February, 2009 and 22 days in March, 2009. She had abandoned the work *w.e.f.* April, 2009 upto June, 2011. During the month of July, 2011 she had hired the work from the respondent/department on bill basis and had received the payments for the execution of various works. Despite the availability of the seasonal works, the petitioner used to absent herself from duties. No fictional breaks had ever been given to her. She had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. Work is provided to the seasonal/casual workers as per its availability and funds. The respondent had followed the principle of 'last come first go' strictly and no fresh hands had been engaged. As per the record, Shri Chaman Lal had never worked with the respondent/department. The services of Shri Love Kumar had been regularized as a forest worker, per the orders of the Court, while the services of Smt. Nirmla Devi were engaged on compassionate grounds in compliance of the orders of the Hon'ble State Administrative Tribunal. The services of Shri Shyam Singh were engaged as a contingent paid worker under died in harness policy after the death of his father. Smt. Sheela Devi was engaged as a part-time worker *w.e.f.* July, 1998. She was made a whole time worker on 26-11-2009 and is working as a daily wager with the respondent/department. Since the petitioner had absented herself from work, the question of her termination during the year 2013 did not arise. She had been engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. *vide* Notification No. FFE-B-C(1)-35/2009 dated 28-4-2009. No junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10-8-2018: —

- (1) Whether time to time termination of service of the petitioner by the respondent during year, 1994 to year, 2013 is/was legal and justified as alleged? ..*OPP.*
- (2) Whether final termination of services of petitioner by the respondent during July, 2013 is/was legal and justified as alleged? ..*OPP.*
- (3) If issue No.1 or issue No.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (5) Whether the petition is bad on the ground of delay and laches as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Sheela Devi appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copy of seniority list dated 31-12-2012 as Ex. PW1/B, copy of seniority list dated 30-11-2016 as Ex. PW1/C and copy of seniority list of daily wagers as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of Award dated 13-1-2005 as Ex. RW1/C, copy of letter dated 19-12-2009 as Ex. RW1/D, copy of order dated 9-7-2003 as Ex. RW1/E and copy of letter dated 27-9-2008 as Ex. RW1/F.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: Negative
Issue No.4	: Not pressed
Issue No.5	: No
Relief.	: Petition is partly allowed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Sheela Devi (petitioner) stepped into the witness box as PW1. In her affidavit

Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she was engaged by the department in the month of August, 2008. Volunteered that, she was engaged in the year 1994. She denied that she was not engaged in the year 1994. She denied that there is seasonal work in the department. Self stated that, work is available throughout the year. She denied that she had worked for 13 days in the year 2008 and for 34 days in the year 2009. She further denied that she had worked on bill basis in the months of July, 2011, March & August, 2012 and July, 2013. She denied that after the month of July, 2013, she had left the work of her own. She admitted that her mandays produced by the department is correct. She also denied that she was never given fictional breaks. She denied that she had not completed 240 days. She owns land, which she cultivates. She further denied that the department had not engaged any junior. She admitted that Shri Love Kumar was appointed as per the orders of the Court. She denied that Shri Chaman Lal had never worked with the department. She admitted that Smt. Nirmla Devi and Shri Shyam Singh were appointed no compassionate grounds. She feigned ignorance that Smt. Sheela Devi was kept at work as part-time in the month of July, 1998.

11. Ex. PW1/B is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31-12-2012.

12. Ex. PW1/C is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30-11-2016.

13. Ex. PW1/D is the copy of seniority list of daily wagers of Joginder Nagar Forest Division.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner was kept at work in the year 1994. Volunteered that, as per the records, she had been kept at work in the year 2008. He admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of services of the petitioner, no attendance or casual card were issued. Volunteered that, she was kept at work of seasonal nature. He further admitted that no notification has been issued regarding status of Forest Department as seasonal industry. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He admitted that as per Ex. RW1/E Smt. Nirmla Devi, Forest Worker was appointed as a daily waged worker. He feigned ignorance that Smt. Nirmla Devi was kept at work in the year 1998. He admitted that as per Ex. RW1/F Shri Shyam Singh was engaged as a daily waged beldar. He specifically admitted that as per the Court order Shri Love Kumar has been given seniority and continuity in service without back wages and his services were regularized in the month of September, 2007. He also admitted that Shri Shyam Singh is junior to the petitioner. Self stated that, Shri Shyam Singh was appointed as a daily wager on compassionate grounds and is working with the department. He denied that the petitioner had been given breaks from time to time upto the year 2013. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against her. He clearly denied that the petitioner is posted since the year 1994. Volunteered that, she did seasonal work as a casual labourer. He was categorical that there was no agreement with the petitioner that she had been kept at work on bill basis. Volunteered that, as per the notification of the government, she was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial no.1 in Ex. PW1/D

is working since the year 2000 and she has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of Award dated 13-1-2005 passed in Reference No. 278/2001 (RBT No.311/04) by this Tribunal.

17. Ex. RW1/D is the copy of letter dated 19-12-2009 regarding policy to regulate the services of Part-Time workers from Principal CCF, H.P.

18. Ex. RW1/E is the copy of order dated 9-7-2003 passed in O.A. (M) No. 20/2000 by the Hon'ble Administrative Tribunal, Shimla.

19. Ex. RW1/F is the copy of letter dated 27-9-2008 regarding appointment of sons, daughters/real relative of government servants died in harness-providing employment thereof.

20. It is the admitted case of the parties that the services of the petitioner were engaged as a daily wager. The mandays chart Ex. RW1/B unfolds that the petitioner was initially employed in the month of August, 2008 by the respondent. Although, the petitioner has claimed that her services were engaged as a daily wager by the respondent in the year 1994, but she has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that she admitted her mandays chart to be correct.

21. The mandays chart Ex. RW1/B clarifies that the month of initial engagement of the petitioner is August, 2008. Placed on record by the petitioner is the Divisional level seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 31-12-2012. It reflects the name of the petitioner at serial no.62 and that her services were engaged as a daily wager on 8-5-2004. A revised Divisional seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016, has also been placed on record by the petitioner as Ex. PW1/C. As per this document the initial date of engagement of the petitioner has been reflected as 1-8-2004. The defence of the respondent is that the petitioner was engaged for seasonal work, as and when available with the respondent and subject to the availability of the budget. However, the respondent has not placed on the file any document evidencing that the petitioner was employed for seasonal forestry works subject to the availability of funds and the work. As per the seniority list of daily wagers of Joginder Nagar Forest Division, Ex. PW1/D, nine daily wagers shown therein have completed 240 days or more in a year. Persons working for 240 days or more in a year cannot be termed as seasonal workers. Even otherwise, it is nowhere the plea taken by the respondent nor there is any iota of evidence on record to show that the forest department has been declared as a seasonal factory, as required under the law. Shri Rajeev Kumar (RW1) while under cross-examination was categorical that no notification has been issued by the Government specifying the forest department as a seasonal industry.

22. The version of the petitioner is that she had worked with the respondent/department upto the year 2013. In the month of July, 2013, her services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex. RW1/B, the petitioner had worked upto the year 2013 but, however, it was itself suggested to the respondent (RW1) by the petitioner that she has been working since the year 1994. Although, the respondent denied the suggestion, but the putting of this suggestion itself by the petitioner leaves no doubt in mind that she claims that she is still serving the department. Then, the Divisional level revised seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016, Ex. PW1/C reflected the name of the petitioner at serial no.59. It is an admitted document on the part of the petitioner, having been proved and exhibited on record by her. Had it been that the services of the

petitioner had finally been terminated by the respondent in the month of July, 2013, her name ought not to have been there in the above said list. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were disengaged by the respondent in July, 2013 in a wrongful manner. From the own suggestion put to the respondent by the petitioner, it can be gathered that she is still serving the department. The fact that the petitioner even after July, 2013 has worked with the respondent, finds support from the seniority list, Ex. Ex. PW1/C, as it reflected the seniority of the daily waged labourers, as it stood on 30-11-2016. In view of these facts, it can easily be said that the petitioner is not speaking the truth. Her services were never finally terminated by the respondent in the month of July, 2013, as alleged. As no retrenchment order was passed by the respondent in the month of July, 2013, it cannot be said that the termination/retrenchment order is illegal and unjustified.

23. So far as providing the fictional breaks to the petitioner by the respondent from time to time from the year 1994 upto 2013 (as per the reference) is concerned, I would like to say that there is no cogent, convincing, strong and reliable evidence on the file to show that the services of the petitioner had been engaged as a daily wage by the respondent in the year 1994. Be it stated here at the risk repetition that as per the mandays chart Ex. RW1/B, which is not disputed by the petitioner, she had initially been engaged in the month of August, 2008. So her claim regarding her time to time termination for the alleged period from the year 1994 upto July, 2008 is not at all tenable. As regards the period from August, 2008 onwards, per the mandays chart, Ex. RW1/B, the work for the entire month was never being provided to the petitioner by the respondent. At the cost of repetition, the respondent has not placed and exhibited on record any document to prove that the services of the petitioner used to be engaged for seasonal forestry works depending upon the availability of the budget. A plea was taken by the respondent that the petitioner had herself abandoned the work of her own free will and volition. If the petitioner used to remain absent from her duties, then why the respondent did not issue any show cause notice to her or initiate disciplinary proceedings against her? The reasons to that effect being obscure go to show that the story put forth by the respondent that the petitioner used to work as per her own sweet will and convenience is incorrect. A plea was also taken to the effect that since July, 2011, the petitioner had been hiring the work from the respondent on bill basis. No doubt, as per the mandays chart Ex. RW1/B for the months of July, 2011, March & August, 2012 and July, 2013, the petitioner is shown to have done the work on bill basis but, however, as per this document earlier the petitioner was engaged as a daily waged worker on muster roll basis. It is nowhere the case of the respondent, nor any evidence has been led to the effect that the change in the conditions of the service applicable to the petitioner, a notice in the prescribed manner of the nature of the change proposed to be effected had been served. Section 9-A of the Act clearly provides that no employer, who proposes to effect any change in the conditions of the service applicable to any workman in respect of any matter specified in the Fourth Schedule, shall effect such change, without giving to the workmen likely to be affected by such change a notice in the prescribed manner of the nature of the change proposed to be effected. That being the position, the aforesaid plea raised by the respondent merits dismissal and is accordingly negated. Artificial/fictional breaks were provided to the petitioner/workman by the respondent, which amounts to unfair labour practice as per the Fifth Schedule appended to the Act. Such being the situation, it is held that the claim petition with regard to the alleged final termination of services of the petitioner by the respondent in the month of July, 2013, is not maintainable. The claim petition with regard to artificial/fictional breaks is maintainable for period from August, 2008 upto July, 2013.

24. Issues no.1 and 2 are decided accordingly, while issue no.3 is answered in the negative and decided against the petitioner.

Issue No.4:

25. Not pressed.

26. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

27. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Of course, the delay in raising the industrial dispute by a workman can be taken into account by the Court while granting the relief(s) claimed. The observations made by our own Hon'ble High Court in case titled *Liaq Ram vs. State of H.P. and others*, 2012 (2) Him. L.R (FB) 580(majority view) will also be advantageous on this aspect of the matter.

28. During her cross-examination, the petitioner admitted that she owns land, which she cultivates. The petitioner has failed to discharge the initial onus that during the period of her forced idleness, she is/was not gainfully employed. For these reasons, she is not entitled to the back wages.

29. This issue is decided in favour of the petitioner and against the respondent.

Relief:

30. As a sequel to my findings on issues above, the instant claim petition succeeds in part and the same is partly allowed. The claim of the petitioner with regard to the final termination of her services in the month of July, 2013 being meritless and not maintainable is dismissed. However, the breaks in service given to the petitioner by the respondent from the month of August, 2008 to July, 2013 are held to be wrong and illegal. The break period is ordered to be counted for the purpose of continuous service as well as the seniority of the petitioner, except back wages. Parties to bear their own costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette. File after due completion be consigned to the Record Room.

Announced in the open Court today this 19th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 188/2014
Date of Institution : 02-5-2014
Date of Decision : 20-7-2019

Shri Rajinder Kumar s/o Shri Prem Chand, r/o Village and P.O. Bhadraina, Tehsil

Palampur, District Kangra, H.P.

..Petitioner.

Versus

The Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.

AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Rajinder Kumar s/o Shri Prem Chand, r/o Village and P.O. Bhadraina, Tehsil Palampur, District Kangra, H.P. by the Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidyalaya (CSKHPKV), Palampur, District Kangra, H.P. or by the concerned Contractor, as alleged by the above employer, *w.e.f.* March/April, 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Fodder department *w.e.f.* August, 2000 and he continued to work as such upto April, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the Fodder department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidyalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4-4-2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Fodder department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2006 upto 31-3-2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No. 207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) had been filed. However, on 14-7-2011 the Director

of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no. 207/2010. It was accepted by the President of the union and application no. 25/2011 was withdrawn by the union. Reference no. 207/2010 was also withdrawn by the union on technical grounds on 20-3-2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Fodder department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8-7-1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on work contract basis during April, 2002, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project

Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked on individual work contractor basis from April, 2002 upto October, 2009. He had raised various bills from time to time. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were not made. At present the petitioner is working under the contractor i.e. outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 22-4-2015:—

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..OPP.
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..OPP.

- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..OPR.
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..OPR.
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..OPR.
- (6) Whether the claim petition is not maintainable in the present form? ..OPR.
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..OPR.
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..OPR.
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rajinder Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8.7.1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statutes of university Mark-A, copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I, copy of office order dated 19-7-2010 as Ex. PW1/J and copy of experience certificate as Ex. PW1/K. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/G, copy of award dated 30-6-2014 as Ex. RW1/J, copy of order dated 20-3-2014 as Ex. RW1/K, copy of letter dated 29-1-2011 as Ex. RW1/L, copy license of M/s Sun Security dated 27-7-2011 as Ex. RW1/M, copy of contract license dated 16-7-2014 as Ex. RW1/N, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/O to Ex. RW1/T, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/U.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes

Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rajinder Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/K.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex.R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-4 (now as Ex. RW1/D to Ex. RW1/G). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual

registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW1/K is the experience certificate of the petitioner.

22. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

23. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

24. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2000. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2000 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

25. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

26. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

27. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

28. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

29. Ex. RW1/D to Ex. RW1/G are the copies of contingent bills relating to the petitioner and others.

30. Ex. RW1/H is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

31. Ex. RW1/I is the copy of order dated 20-3-2014 passed in Reference no. 207/2010 by this Court.

32. Ex. RW1/J is the copy of letter dated 29-1-2011 regarding registration of establishment.

33. Ex. RW1/K is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

34. Ex. RW1/L is the copy of certificate of registration relating to M/s. Sahayata Security.

35. Ex. RW1/M is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

36. Ex. RW1/N is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

37. Ex. RW1/O is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

38. Ex. RW1/P is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

39. Ex. RW1/Q is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/R is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/S is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/T is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

43. Ex. RW1/U is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

44. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

45. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

46. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was

not an employee of the company but of some other person.

47. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex. R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air, as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/G. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/G, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, *vide* office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in August, 2000 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

48. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2000 upto April, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a

daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a 'workman' and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as **Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367**, it has been laid down by the Hon'ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

49. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as **Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273; State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172**. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

50. Reliance was also placed upon cases titled as **Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165**, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

51. Reference was also made by the petitioner to the cases titled as **Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974**, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as **Hindalco Industries Ltd. vs. Association of Engineering Workers, 2008 LLR 509**, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

52. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker

by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

53. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

54. Not pressed.

Relief:

55. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No.	: 170/2017
Date of Institution	: 08-8-2017
Date of Decision	: 20-07-2019

Smt. Lata Devi w/o Shri Yash Pal, r/o Village and Post Office Tanihar, Tehsil Sarkaghat,
District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
 For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication: —

“Whether termination of services of Smt. Lata Devi w/o Shri Yash Pal, r/o Village and Post Office Tanihar, Tehsil Sarkaghat, District Mandi, H.P. from time to time during July, 2011 to November, 2012 and finally terminated during December, 2012 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as set out in the statement of claim is that her services were engaged by the respondent on daily waged basis in the year 2002. She worked under the supervision of Forest Range Officer, Kamlah upto the year 2012. The latter used to disengage her services without any written order so that she could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to ‘the Act’ for short). The services of the petitioner had been finally terminated by the respondent in December, 2012. Fictional breaks were given by the respondent from the year 2002 upto the year 2012. It is also asserted that while terminating the services of the petitioner in December, 2012, the respondent had not followed the principle of ‘last come first go’ whereas the persons junior to her, namely, S/Sh./Smt. Bimla Devi, Kanta Devi, Purmila Devi, Raj Kumar, Raj Kumari, Surinder Kumar, Bidhi Chand, Shyam Singh and Sarita Devi were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. She had raised a demand notice on 26-8-2015 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was denied that the petitioner was engaged in the year 2002 and had worked upto the year 2012. It was claimed that she had been engaged in the month of July, 2011 and that she had worked as such upto November/December, 2012 on bill voucher basis. At the time of termination of services of the petitioner, she had completed more than 240 days. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable. The contents of the petition were denied on merits. It is asserted that during the months of July & August, 2011 and August & November, 2012 she had hired the work from the respondent/department on bill basis and had received the payments for the execution of various works. It was denied that she had been engaged in the year 2002. Despite the availability of the seasonal works, the petitioner used to absent herself from duties. No fictional breaks had ever been given to her. She had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. Work is provided to the seasonal/casual workers as per its availability and funds. The respondent had followed the principle of ‘last come first go’ strictly and no fresh hands had been engaged. It is

averred that the claim of the petitioner regarding final termination in the year 2012 was wrong, as she had been working on bill basis for execution of seasonal works. The petitioner was an intermittent work and had absented herself during the course of her engagement and she used to report for duty as per her own convenience and sweet will. The services of S/Shri/Smt. Bimla Devi, Kamla Devi and Raj Kumar were engaged on 1-7-2000, 1-8-2000 and 1-4-2011 respectively for seasonal forestry works and they all were senior to the petitioner. The services of Shri Shyam Singh were engaged as a contingent paid worker under died in harness policy after the death of his father. As per the record, S/Shri/Smt. Purnima Devi, Raj Kumari, Surender Kumar, Bidhi Chand and Sarita Devi had never worked with the respondent/department. Since the petitioner had absented herself from work, the question of her termination in December, 2012 did not arise. She had been engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. vide Notification No. FFE-B-C(1)-35/2009 dated 28-4-2009. No person junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an agriculturist. Hence, it was prayed that the petition be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court vide order dated 10-8-2018:—

- (1) Whether time to time termination of service of the petitioner by the respondent during July, 2011 to November, 2012 is/was legal and justified as alleged? ..OPP.
- (2) Whether final termination of services of petitioner by the respondent during December, 2012 is/was legal and justified as alleged? ..OPP.
- (3) If issue No.1 or issue No. 2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..OPP.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..OPR.
- (5) Whether the petition is bad on the ground of delay and laches as alleged? ..OPR.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Lata Devi appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copy of seniority list dated 31-12-2012 as Ex. PW1/B, copy of seniority list dated 30-11-2016 as Ex. PW1/C and copy of seniority list of daily wagers as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B and copy of letter dated 27-9-2008 as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly

Issue No.3	: Negative
Issue No.4	: Yes
Issue No.5	: Not pressed
Relief.	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Lata Devi (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she was engaged by the department in the month of July, 2011. Volunteered that, she was engaged in the year 2002. She denied that she was not engaged in the year 2002. She denied that there is seasonal work in the department. Self stated that, work is available throughout the year. She denied that she had worked on bill basis in the months of July & August, 2011 and August & November, 2012. She denied that after the year 2012, she had left the work of her own. She admitted that her mandays produced by the department is correct. She denied that she was never given fictional breaks. She denied that she had not completed 240 days. She further denied that the department had not engaged any junior. She admitted that Shri Love Kumar was appointed as per the orders of the Court. She feigned ignorance that Smt. Kamla Devi and Shri Raj Kumar were senior to her. She denied that S/Shri/Smt. Purmila Devi, Raj Kumari, Surender Kumar, Bidhi Chand and Sarita had never worked with the respondent. She admitted that Shri Shyam Singh was appointed on compassionate grounds.

11. Ex. PW1/B is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31-12-2012.

12. Ex. PW1/C is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30-11-2016.

13. Ex. PW1/D is the copy of seniority list of Daily Wagers of Joginder Nagar Forest Division.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by him.

In the cross-examination, he denied that the petitioner was kept at work in the year 2002. Volunteered that, as per the record the petitioner was kept at work in the year 2011. He admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of the services of the petitioner, no attendance or casual card were issued. Volunteered that, she was kept at work of seasonal nature. He further admitted that no notification has been issued regarding status of Forest Department as seasonal industry. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He admitted that as per Ex. RW1/C Shri Shyam Singh was

engaged as a daily waged beldar. He specifically admitted that as per the Court order Shri Love Kumar has been given seniority and continuity in service without back wages and his services were regularized in the month of September, 2007. He denied that Shri Shyam Singh is junior to the petitioner. Self stated that, Shri Shyam Singh was appointed as a daily wager on compassionate grounds and is working with the department. He denied that the petitioner had been given breaks from time to time upto the year 2012. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against her. He clearly denied that the petitioner is posted since the year 2002. Volunteered that, she did seasonal work as a casual labourer. He was categorical that there was no agreement with the petitioner that she had been kept at work on bill basis. Volunteered that, as per the notification of the government, she was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial no.1 in Ex. PW1/D is working since the year 2000 and she has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of letter dated 27-9-2008 regarding appointment of sons, daughters/real relative of government servants died in harness-providing employment thereof.

17. It is the admitted case of the parties that the services of the petitioner had been engaged. According to the petitioner she had been engaged on daily waged basis in the year 2002, whereas it is the stand taken by the respondent that the petitioner had hired the work on bill basis from the respondent during the months of July & August, 2011 and August and November, 2012 only. The mandays chart Ex. RW1/B unfolds that the petitioner had worked under the respondent on bill basis only for the months of July & August, 2011 and for the months of August & November, 2012. Although, the petitioner has claimed that her services were engaged as a daily wager by the respondent in the year 2002, but she has not placed on record any document in this regard. Then, the cross-examination of the petitioner reveals that she admitted her mandays chart to be correct. The respondent has not placed/exhibited on record any document evidencing that the services of the petitioner were engaged for carrying out seasonal works only to her (petitioner's) knowledge.

18. The version of the petitioner is that from the year of her initial engagement to the year 2012, artificial/fictional breaks in service were provided to her by the respondent. Her services were wrongly and illegally terminated by the respondent in December, 2012.

19. While denying the said facts, the respondent has pleaded that the petitioner had been hiring the work on bill basis from the respondent and had been receiving payments for the same. She had been doing the work intermittently as per her sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time. She had abandoned the work. Her services were never finally terminated as alleged.

20. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

21. Ex. RW1/B is the mandays chart relating to the petitioner. Its perusal discloses that the petitioner had worked under the respondent for two months each in the years 2011 and 2012.

22. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why she (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by her? Ex. RW1/B unfolds that for the months of July & August, 2011 and for the months of August & November, 2012, the petitioner had worked under the respondent on bill basis. A person not working for a single day or

for less than 50 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to her by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about her rights for about five years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of her claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of regular employee with a malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of her employment.

23. Now coming to the question as to whether in the month of December, 2012, the services of the petitioner were finally terminated by the respondent (as per the reference) or not?

24. In the reply, the respondent has specifically pleaded that the petitioner had hired the work on bill basis from the respondent/department during the months of July & August, 2011 and August & November, 2012. After November, 2012 the petitioner had not turned up to work of her own sweet will.

25. The version of the petitioner is that she had worked with the respondent/department upto November, 2012. In December, 2012 her services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex.RW1/B, the petitioner had worked upto November, 2012 but, however, it was itself suggested to the respondent (RW1) by the petitioner that she has been working since the year 2002. Although, the respondent denied the suggestion, but the putting of this suggestion itself by the petitioner leaves no doubt in mind that she claims that she is still serving the department. Then, the Divisional seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 31-12-2012, Ex. PW1/B reflected the name of the petitioner at serial No. 58. A Divisional level revised seniority list of casual labourers/daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016 has also been placed on record by the petitioner as Ex. PW1/C. The name of the petitioner figures at serial no.108 of the list. These are admitted documents on the part of the petitioner, having been proved and exhibited on record by her. Had it been that the services of the petitioner had finally been terminated by the respondent in the month of December, 2012, her name ought not to have been reflected in the above said lists. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that her services were disengaged by the respondent in December, 2012 in a wrongful manner. From the own suggestion put to the respondent by the petitioner, it can be gathered that she is still serving the department. The fact that the petitioner even after December, 2012 had worked with the respondent, finds support from the seniority lists, Ex. PW1/B and Ex. PW1/C, as they reflected the seniority of the daily waged labourers, as it stood on 31-12-2012 and 30-11-2016 respectively. In view of these facts, it can easily be said that the petitioner is not speaking the truth. Her services were never finally terminated by the respondent in the month of December, 2012, as alleged. As no retrenchment order was passed by the respondent in the month of December, 2012, it cannot be said that the termination/retrenchment order is illegal and unjustified.

26. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that her services were not finally terminated by the respondent during December, 2012. She is not entitled to any relief.

27. Issues No.1 and 2 are decided accordingly, while issue no.3 is answered in the negative and decided against the petitioner.

Issue No. 4:

28. Taking into account my findings on issues No. 1 to 3 above, it held that the instant

claim petition is not maintainable in the present form.

29. This issue is answered in the affirmative and in favour of the respondent.

Issue No. 5:

30. Not pressed.

Relief:

31. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 176/2017
Date of Institution : 08-8-2017
Date of Decision : 20-07-2019

Shri Bhim Singh s/o Shri Lekh Ram, r/o village Jhilan, P.O. Jhatingri, Tehsil Padhar,
District Mandi, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P.
..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The below given reference has been received from the appropriate Government for adjudication: —

“Whether the termination of services of Shri Bhim Singh s/o Shri Lekh Ram, r/o Village

Jhilan, P.O. Jhatingri, Tehsil Padhar, District Mandi, H.P. from time to time during July, 2007 to September, 2015 and finally terminated during October, 2015 by the Divisional Forest Officer, Forest Division, Joginder Nagar, District Mandi, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, what amount of back wages, past service benefits, seniority, regularization and compensation the above worker is entitled to from the above employer/management?"

2. The case of the petitioner, as set out in the statement of claim is that his services were engaged by the respondent on daily waged basis in the year 2006. He worked under the supervision of Forest Range Officer, Urla upto the year 2015. The latter used to disengage his services without any written order so that he could not complete more than 240 days during the aforesaid period for the purposes of the provisions of Section 25-B of the Industrial Disputes Act, 1947 (hereinafter referred to 'the Act' for short). The services of the petitioner had been finally terminated by the respondent in the year 2015. Fictional breaks from time to time were given by the respondent from the year 2006 upto the year 2015. It is also asserted that while terminating the services of the petitioner in the year 2015, the respondent had not followed the principle of 'last come first go' whereas the persons junior to her, namely, S/Smt./Shri Shyam Singh, Sheela Devi, Sunil Kumar, Rani Devi, Prem Singh and Kashmir Singh were retained in service without any breaks and all these workers are still working with the respondent/department. No muster roll, casual card and wages slip had ever been provided to the petitioner by the respondent. He had raised a demand notice on 18-3-2014 against the respondent. Its copy stood forwarded to the Labour-Inspector-cum-Conciliation Officer, Joginder Nagar. Demand notice was responded to by the respondent, wherein it was denied that the petitioner was engaged in the year 2006 and had worked upto the year 2015. It was claimed that he had been engaged in the year 2007 and that he had worked as such upto the year 2015 on bill voucher basis. At the time of termination of services of the petitioner, he had completed more than 240 days. The act and conduct of the respondent is highly unjustified, arbitrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objection that no legal and fundamental right of the petitioner has been infringed by the respondent, so the petition was not maintainable. The contents of the petition were denied on merits. However, it was admitted that the petitioner was engaged as a casual labourer in the department during July, 2006 on seasonal forestry works, as per the availability of work and funds. He had worked intermittently as per the availability of work and funds on muster rolls for the months of July, October and November, 2006. During the year 2007 he had hired the work from the respondent/department on bill basis and had received the payments for the execution of various works. Despite the availability of the seasonal works, the petitioner used to absent himself from duties. No fictional breaks had ever been given to him. He had not completed 240 days in the preceding twelve calendar months to fulfill the conditions of Section 25-B of the Act. So, there is no violation of Section 25-F of the Act. Work is provided to the seasonal/casual workers as per its availability and funds. The respondent had followed the principle of 'last come first go' strictly and no fresh hands had been engaged. The services of Shri Shyam Singh were engaged as a contingent paid worker under died in harness policy after death of his father. Smt. Sheela Devi was engaged as a part-time worker *w.e.f.* July, 1998. She was made a whole time worker on 26-11-2009 and is working as a daily wager with the respondent/department. Shri Sunil Kumar, Smt. Rani Devi, Shri Prem Singh and Shri Kashmir Singh were engaged for seasonal forestry works. Since the petitioner had absented himself from work, the question of his termination during the year 2015 did not arise. He had been engaged on bill voucher basis as per the directions of the Additional Chief Secretary (Forests) to the Government of H.P. vide Notification No. FFE-B-C(1)-35/2009 dated 28.4.2009. No junior to the petitioner had been engaged by the respondent. The petitioner is gainfully employed, being an

agriculturist. Hence, it was prayed that the petition be dismissed.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10-8-2018:—

- (1) Whether time to time termination of service of the petitioner by the respondent during July, 2007 to September, 2015 is/was legal and justified as alleged? ..*OPP*.
- (2) Whether final termination of services of petitioner by the respondent during October, 2015 is/was legal and justified as alleged? ..*OPP*.
- (3) If issue No.1 or issue No.2 or both are proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP*.
- (4) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR*.

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Bhim Singh appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copy of seniority list dated 31-12-2012 as Ex. PW1/B, copy of seniority list of daily wagers as Ex. PW1/C and copy of seniority list dated 31-12-2012 as Ex. PW1/D. The respondent examined one Shri Rajeev Kumar as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of mandays chart of the petitioner as Ex. RW1/B, copy of letter dated 19-12-2009 as Ex. RW1/C and copy of letter dated 27-9-2008 as Ex. RW1/D.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Decided accordingly
Issue No.2	: Decided accordingly
Issue No.3	: Negative
Issue No.4	: Yes
Relief.	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Bhim Singh (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath

the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked intermittently with the department from July, 2006 upto September, 2015. Volunteered that, the department had been giving breaks. He also denied that the department had not given any breaks. Further, he denied that he had abandoned the work after September, 2015. He denied that there is seasonal work in the department. Self stated that work is available throughout the year. He further denied that he had worked on bill basis since July, 2007. He admitted that he had not completed 240 days in any year. He owns land, which he cultivates. He denied that the department had not engaged any junior. He feigned ignorance that Smt. Sheela Devi was kept at work as a part-time in the month of July, 1998. He admitted that Shri Love Kumar was appointed as per the orders of the Court. He also admitted that Shri Shyam Singh was appointed on compassionate grounds. He feigned ignorance that these days S/Smt./Shri Sunil Kumar, Rani Devi, Prem Singh and Kashmir Singh were not working with the department.

11. Ex. PW1/B is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 30-11-2016.

12. Ex. PW1/C is the copy of seniority list of Daily Wagers of Joginder Nagar Forest Division.

13. Ex. PW1/D is the copy of Divisional Level revised seniority list of casual labour daily wagers of Joginder Nagar Forest Division as it stood on 31-12-2012.

14. Conversely, Shri Rajeev Kumar, Divisional Forest Officer, Joginder Nagar (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he admitted that as per the record the petitioner was kept at work in July, 2006. He admitted that at the time of engagement of the petitioner, no appointment letter was issued. He also admitted that during the period of the services of the petitioner, no attendance or casual card were issued. Volunteered that, he was kept at work of seasonal nature. He further admitted that no notification has been issued regarding status of Forest Department as seasonal industry. He denied that the respondent had intentionally given fictional breaks to the petitioner. He admitted that no notice had been issued for temporary work by the department. At present 27 forest workers are posted in Joginder Nagar Forest Division. He feigned ignorance that Smt. Nirmla Devi was kept at work in the year 1998. He admitted that as per Ex. RW1/D Shri Shyam Singh was engaged as a daily waged beldar. He specifically admitted that as per Court order Shri Love Kumar has been given seniority and continuity in service without back wages and his services were regularized in the month of September, 2007. He denied that Shri Shyam Singh is junior to the petitioner. Self stated that, Shri Shyam Singh was appointed as a daily wager on compassionate grounds and is working with the department. He admitted that no notice had been given to the petitioner to report for duty nor any departmental inquiry had been initiated against him. He was categorical that there was no agreement with the petitioner that he had been kept at work on bill basis. Volunteered that, as per the notification of the government, he was kept at work on bill basis. He further admitted that Smt. Nirmla Devi figuring at serial No.1 in Ex. PW1/C is working since the year 2000 and she has been regularized.

15. Ex. RW1/B is the copy of the mandays chart relating to the petitioner.

16. Ex. RW1/C is the copy of letter dated 19-12-2009 regarding policy to regulate the services of Part-Time workers from Principal CCF, H.P.

17. Ex. RW1/D is the copy of letter dated 27-9-2008 regarding appointment of sons, daughters/real relatives of government servants died in harness-providing employment thereof.

18. It is the admitted case of the parties that the services of the petitioner were engaged in the month of July, 2006. Though, the respondent (RW1) in his examination-in-chief stated that the petitioner was employed as a casual labourer but, however, he has not placed and exhibited on record any document evidencing that the services of the petitioner were engaged as a casual/seasonal labourer for carrying out the seasonal works only to his (petitioner's) knowledge.

19. The version of the petitioner is that from the year of his initial engagement to the year 2015, artificial/fictional breaks in service were provided to him by the respondent. His services were wrongly and illegally terminated by the respondent in the year 2015.

20. While denying the said facts, the respondent has pleaded that the petitioner was only a casual/seasonal worker, who used to work intermittently as per his sweet will and convenience. No intentional breaks in service were provided to the petitioner at any point of time. Since the year 2007, the petitioner had been hiring the work from the respondent/department on bill basis and had been receiving the payments for the execution of the works. He is still working with the respondent on bill basis. His services were never finally terminated as alleged.

21. Firstly, I proceed to decide as to whether fictional breaks in service were given to the petitioner by the respondent as alleged?

22. Ex.RW1/B is the mandays chart relating to the petitioner. Its perusal discloses that the petitioner had worked under the respondent from the month of July, 2006 to September, 2015. The petitioner (PW1) admitted in his cross-examination that he had never worked for 240 days in any year.

23. If intentional breaks in service were being provided to the petitioner by the respondent time and again as alleged, then why he (petitioner) did not agitate the said fact earlier or at the time of the receipt of the payments for the working days actually put in by him? Ex.RW1/B unfolds that in the month of July, 2007, for the months of May, July, October and December, 2008, for the months of May, July and October, 2009, for the months of April, May and October, 2010, the months of March, April, May and June, 2011, the months of January, July and December, 2012, for the months of April to June, August and November, 2013, the month of November, 2014 and for the months of January to March, July and September, 2015, the petitioner had worked under the respondent on bill basis. A person not working for a single day or for less than 50 days in the whole year cannot be permitted to countenance that artificial/fictional breaks were provided to him by the respondent/department wrongly and illegally. The fact that the petitioner had remained tight lipped and complacent about his rights for about two years and had been receiving the payments without any protests speaks volumes about the truthfulness and veracity of his claim. To my mind, a false plea of intentional breaks has been put forth by the petitioner so as to derive the benefits of regular employee with a malafide intention and ulterior motive. No artificial/fictional breaks were given to the petitioner by the respondent during the course of his employment.

24. Now coming to the question as to whether in the month of October, 2015, the services of the petitioner were finally terminated by the respondent (as per the reference) or not?

25. In the reply, the respondent has specifically pleaded that the plea of the petitioner as regards his final termination has become infructuous, as he is still working with the respondent on bill basis.

26. The version of the petitioner is that he had worked with the respondent/department upto September, 2015. In the year 2015 his services were terminated by the respondent wrongly and illegally. No doubt, as per the mandays chart Ex. RW1/B, the petitioner had worked upto the year 2015 but, however, the Divisional level revised seniority list of casual labourer daily wagers of Joginder Nagar Forest Division, as it stood on 30-11-2016, Ex. PW1/B reflected the name of the petitioner at serial No. 66. It is an admitted document on the part of the petitioner, having been proved and exhibited on record by him. Had it been that the services of the petitioner had finally been terminated by the respondent in the month of October, 2015, his name ought not to have been there in the above said list. Therefore, I am at a loss to understand as to how it lies in the mouth of the petitioner to say that his services were disengaged by the respondent in October, 2015 in a wrongful manner. In view of these facts, it can easily be said that the petitioner is not speaking the truth. His services were never finally terminated by the respondent in the month of October, 2015, as alleged. As no retrenchment order was passed by the respondent in the month of October, 2015, it cannot be said that the termination/retrenchment order is illegal and unjustified.

27. Such being the situation, I have no hesitation to conclude that artificial/fictional breaks were not provided to the petitioner and that his services were not finally terminated by the respondent during October, 2015. He is not entitled to any relief.

28. Issues No.1 and 2 are decided accordingly, while issue No.3 is answered in the negative and decided against the petitioner.

Issue No. 4:

29. Taking into account my findings on issues No. 1 to 3 above, it is held that the instant claim petition is not maintainable in the present form.

30. This issue is answered in the affirmative and in favour of the respondent.

Relief:

31. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 20th day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 365/2016
Date of Institution : 27-5-2016
Date of Decision : 22-07-2019

Shri Dev Raj s/o Shri Achar Singh, r/o Village Nanglahar, P.O. Geora, Tehsil Nurpur,
District Kangra, H.P. ..Petitioner.

Versus

The Managing Director, M/s Kwaliti Pharmaceuticals Private Limited, Industrial Area, Plot
No.1, Raja Ka Bag, Jassur, Tehsil Nurpur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent : Sh. K.K. Chaudhary, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Shri Dev Raj s/o Shri Achar Singh, r/o Village Nanglahar, P.O. Geora, Tehsil Nurpur, District Kangra, H.P. *w.e.f.* 28-08-2014 (as alleged by workman) by the Managing Director, M/s Kwaliti Pharmaceuticals Private Limited, Industrial Area, Plot No.1, Raja Ka Bag, Jassur, Tehsil Nurpur, District Kangra, H.P. without complying with the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case is listed for evidence/cross-examination of the respondent for today but, however, the petitioner (Shri Dev Raj) has made the below given statement in the Court today:-

“Stated that I have entered into compromise with the respondent. As per settlement I have received a sum of rupees 50,000/- as full & final settlement of the claim under Industrial Disputes Act. Nothing is due against the respondent and now I do not want to press the present claim petition. Hence, same be dismissed as compromised”.

3. Shri Rajender Singh s/o Sh. Dilawar Singh, presently working as Accounts Officer appearing for the respondent has also made the below given statement in the Court today:-

“Stated that I have entered into compromise with the petitioner and as per settlement I have paid a sum of rupees 50,000/- as full & final settlement of the claim under Industrial Disputes Act to the petitioner. I have no objection for withdrawal of the claim petition”.

4. In view of the above statements, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

7. File after due completion be consigned to the records.

Announced in the open Court today this 22nd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 350/2014
Date of Institution : 16.12.2014
Date of Decision : 22.07.2019

Shri Sanjay Kumar s/o Shri Baldev Singh, r/o VPO Bhleta, Tehsil Nurpur, District Kangra,
H.P. ..Petitioner.

Versus

The Manager, M/s Kawality Pharmaceuticals Pvt. Ltd., Industrial Area, Raja Ka Baag,
Tehsil Nurpur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. S.S. Sippy, AR
For the Respondent : Sh. K.K. Chaudhary, Adv.

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Sanjay Kumar s/o Sh. Baldev Singh, VPO-Bhleta, Tehsil Nurpur, Distt. Kangra, H.P. by The Manager/Employer, M/s Kawality Pharmaceuticals Pvt. Ltd. Industrial Area, Raja Ka Baag, Tehsil Nurpur, Distt. Kangra, (H.P.) w.e.f. 10-7-2013 without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above worker is entitled to from the above employer?”

2. The case is listed for evidence/cross-examination of the respondent for today but, however, the petitioner (Shri Sanjay Kumar) has made the below given statement in the Court today:—

“Stated that I have entered into compromise with the respondent. As per settlement I have

received a sum of rupees 50,000/- as full & final settlement of the claim under Industrial Disputes Act. Nothing is due against the respondent and now I do not want to press the present claim petition. Hence, same be dismissed as compromised”.

3. Shri Rajender Singh s/o Sh. Dilawar Singh, presently working as Accounts Officer appearing for the respondent has also made the below given statement in the Court today:—

“Stated that I have entered into compromise with the petitioner and as per settlement I have paid a sum of rupees 50,000/- as full & final settlement of the claim under Industrial Disputes Act to the petitioner. I have no objection for withdrawal of the claim petition”.

4. In view of the above statements, this reference/claim petition is dismissed as withdrawn. Parties to bear their own costs.

5. The reference is answered in the aforesaid terms.

6. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

7. File after due completion be consigned to the records.

Announced in the open Court today this 22nd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 677/2016
Date of Institution : 03-10-2016
Date of Decision : 22-07-2019

Shri Bikram Chand s/o Shri Dulo Ram, r/o Village Kunsal, P.O. Thara Baijnath, District Kangra, H.P. ..Petitioner.

Versus

The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Sh. Bikram Chand s/o Sh. Dulo Ram, r/o Village Kunsal, P.O. Thara, Baijnath, Distt. Kangra, H.P. from 1-1-2006 by the Divisional Forest Officer Forest Division Palampur, Distt. Kangra, H.P. who had worked as beldar on daily wages basis from 2000 to 31-12-2005 and has raised his industrial dispute *vide* demand notice dated 11-5-2015 after more than 9 years, without complying with the provisions of the Industrial Disputes Act, 1947 is legal and justified? If not, keeping in view of working period mentioned as above and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged on daily waged basis on muster roll by the respondent *w.e.f.* the year 2000 and had worked under the respondent in IGCP Palampur upto 31-12-2005. Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. He had worked continuously with the respondent without any breaks upto 31-12-2005 and had completed 240 days in each calendar year. During the period from the year 2000 upto 31-12-2005, the salary was paid to him by the Forest Department. His work and conduct had been found satisfactory for this period. However, his services were unlawfully terminated by the respondent/department on 31-3-2006, without notice. On his asking, he was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31-3-2006 and that his services were no more required by the department in future. Alongwith him 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) was served upon him, nor he was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondent had violated the principle of ‘last come first go’ as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand, Anup Chauhan and Ajay Katoch, who all were junior to the petitioner, had worked with the respondent as such upto 31-12-2006. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad on account of delay and laches and for non-joinder of necessary parties. The contents of the petitioner were denied by the respondent on merits. It is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. He was engaged as a daily wager during the year 2000 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondent is not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondent, the question of adjusting other workers by the respondent does not arise. No verbal assurance had ever been given by the respondent to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondent also did not arise. The petitioner is working as an agriculturist and is gainfully employed. The respondent, thus,

prays for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18-10-2017:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 01-01-2006 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Bikram Chand appeared as PW1 and tendered in evidence his statement by way of affidavit as Ex. PW1/A, copies of letters dated 21-12-2004, 1-1-2009, 15-12-2009, 3-12-2009, 15-2-2006, 29-2-2004, 17-11-2008, 2-1-2014 & 21-9-1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K, copies of RTI information dated 4-1-2011, 22-9-2014, 11-09-2014 & 18-9-2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1-12-2009 as Ex. PW1/N, copy of order dated 28-2-2013 as Ex. PW1/O, copy of RTI information dated 1-1-2014 as Ex. PW1/P, copy of order dated 2-12-2008 as Ex. PW1/Q and copy of RTI dated 14-8-2014 as Ex. PW1/R. The respondent examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of list of contractual staff as Ex. RW1/B and copy of agreement as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Issue No.5	: Not pressed
Relief.	: Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 and 2:

9. Both these issues are intrinsically connected with each other and required common

appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Shri Bikram Chand (petitioner) stepped into the witness box as PW1. In his affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, he reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, he denied that he had worked in the Indo-German Changer Project, Palampur. Volunteered that, he had never worked in the project, but had worked in the forest department. He denied that he was engaged *w.e.f.* 01-4-2003 upto 31-12-2005 in the said project. Volunteered that, he was kept at work in the year 2000. He feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. He also showed his ignorance that the project was a German aided project. He was also not aware that the forest department had no concern with the project. He denied that he was kept on temporary basis in the project. He denied that he had neither been kept nor removed from work by the forest department. He denied that from the year 2005 upto the year 2015, he had not raised the dispute. He admitted that he had raised the demand notice in May, 2015. He categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. He admitted that he owns land, which he cultivates. He denied that a false claim has been filed just to take undue benefit.

11. Ex. PW1/B is the copy of letter dated 21-12-2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

12. Ex. PW1/C is the copy of letter dated 1-1-2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

13. Ex. PW1/D is the copy of letter dated 15-12-2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

14. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWDP.

15. Ex. PW1/F is the copy of letter dated 15-2-2006 regarding closure of Indo-German Changer Project Palampur.

16. Ex. PW1/G is the copy of letter dated 29-4-2009 regarding appointment of daily waged drivers- Information under RTI thereof.

17. Ex. PW1/H is the copy of letter dated 17-11-2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

18. Ex. PW1/I is the copy of letter dated 2-1-2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

19. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

20. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

21. Ex. PW1/M is the copy of letter dated 22-9-2014 regarding information of filling up of

512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

22. Ex. PW1/N is the copy of judgment dated 1-12-2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

23. Ex. PW1/O is the copy of judgment dated 28-2-2013 passed by the learned Additional District Judge-II, Kangra at Dhramshala in Civil Appeal No.271-P/2010.

24. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

25. Ex. PW1/Q is the copy of Award dated 2-12-2008 passed in Reference No.117/2007 by this Court.

26. Ex. PW1/R is the copy of letter dated 14-8-2014, being information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

27. Conversely, Shri B.S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, he had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster roll. Self stated that, he was kept on agreement. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by the Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of his appointment upto 31-12-2005, the petitioner had continuously worked for more than 240 days. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was also admitted by him that as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was further admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. Further, he admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

28. Ex. RW1/B is the copy of list of contractual staff of defunct Indo-German Eco-Development project, Palampur. It depicts the name of the petitioner at serial no.26 and that he had worked on contractual basis for different spells from 01-4-2003 to 31-12-2005.

29. Ex. RW1/C is the copy of Agreement dated 4th October, 2005 executed between the

Member Secretary Himachal Pradesh Eco-Development Society, Palampur and Shri Bikram Chand (petitioner).

30. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily wage basis. The respondent denied this fact. Therefore, the onus lay on the petitioner to prove such fact. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. This only goes to show that he had never been engaged on the muster roll. Then, no seniority list of daily waged workers maintained by the respondent, reflecting his name, has been placed and exhibited on record by the petitioner. Rather, the respondent has tendered in evidence list of contractual staff of defunct Indo-German Eco-Development Project, Palampur as Ex. RW1/B. It reflects the name of the petitioner at serial no. 26. It shows that he had worked as a G.P. M&E Gram Panchayat Micro Plan Facilitator in the project for specified periods on contract basis. Lastly, from 1-10-2005 to 31-12-2005, he had worked on contract basis. Placed on record by the respondent is also a copy of agreement, Ex. RW1/C entered into between the petitioner and the Member Secretary, Himachal Pradesh Eco-Development Society, Palampur. As per this agreement the petitioner was to serve the employer for a specified period of three months *w.e.f.* 1-10-2005 upto 31-12-2005. Admittedly, the period of contractual appointment of the petitioner came to an end on 31-12-2005. Thereafter, the contractual employment of the petitioner was not renewed by the employer, since as per the version of the respondent the Indo-German Changer Project stood closed.

31. Clauses 6 & 7 of the Agreement Ex. Ex. RW1/C postulate as under:—

“6. The employment is on purely contract basis and the employee shall not claim for regularization in the organization of employer or any other concern of the central or state govt. at any time.

7. This agreement shall come to an end even before the period of this agreement in the event of the termination of the project or/and termination of the specific work given to the employee by the competent authority and in such eventuality, it shall be presumed that the employer has relieved the employee from his service with one calendar month's notice”.

32. In view of the documents Ex. RW1/B and Ex. RW1/C, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that his services had been engaged by the respondent on daily wage basis. It is the basic law that non renewal of the term of the contractual appointment does not fall within the mischief of the word ‘retrenchment’ as defined in the Act as per clause (bb) of Section 2(oo) of the Act. For these reasons, neither the claim petition is maintainable nor it can be concluded that the respondent has flouted any of the provisions of the Act.

33. Be it stated that the services of the petitioner were not terminated by the respondent as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from time to time *w.e.f.* 01-04-2003 upto 31-12-2005 came to end with the efflux of time.

34. Such being the situation and taking into account the observations made in cases titled as *State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81*, it is held that the petitioner has no locus standi to sue.

35. It appears to me that the avarice of the petitioner to grab the job and money has forced

him to file a totally false and baseless claim. No relief can be granted to him.

36. Both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

38. In *Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another*, (1999) 6 SCC 82, it has been observed by the Hon'ble Supreme Court that:

“The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone”.

39. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5:

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 22nd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 578/2016
Date of Institution : 24-8-2016

Date of Decision : 22-07-2019

Smt. Babita Sharma w/o Shri Ashok Sharma, r/o V.P.O. Sullah, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

The Divisional Forest Officer, Forest Division Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Sh. B.C. Katoch, A.D.A.

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of the services of Smt. Babita Sharma w/o Shri Ashok Sharma, r/o V.P.O. Sullah, Tehsil Palampur, District Kangra, H.P. *w.e.f.* 01-04-2006 by the Divisional Forest Officer, Palampur Forest Division, Palampur, District Kangra, H.P., without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified; whereas she has raised the industrial dispute vide demand notice dated 11-05-2015 after lapse of more than 9 years. If not, keeping in view of working period from October, 2002 to 31-03-2006 and delay of more than 9 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that her services were engaged on daily waged basis on muster roll by the respondent *w.e.f.* November, 2001 and had worked under the respondent in IGCP Palampur upto 31-3-2006. Its control was under the Principal Secretary Forest to the Government of Himachal Pradesh. The petitioner had worked under the control and supervision of the Forest Department officials, like Range Officer, Dy. Range Officer and Forest Guard, alongwith other co-workers, namely, S/Shri Bishan Dass and Sushil Kumar. She had worked continuously with the respondent without any breaks upto 31-3-2006 and had completed 240 days in each calendar year. During the period from the year 1993 upto 31-3-2006, the salary was paid to her by the Forest Department. Her work and conduct had been found satisfactory for this period. However, her services were unlawfully terminated by the respondent/department on 1-4-2006, without notice. On her asking, she was told that the Government had decided to close IGCP, Palampur *w.e.f.* 31-3-2006 and that her services were no more required by the department in future. Alongwith her 85 other daily waged workmen had been retrenched. No three months notice as envisaged under Section 25-N of the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) was served upon her, nor she was paid any retrenchment compensation. Even prior permission from the appropriate Government had not been obtained. In retrenching the petitioner, it is further averred that the respondent had violated the principle of ‘last come first go’ as envisaged under Section 25-G of the Act, as the workmen, namely, S/Shri Rakesh Chand and Dinesh Rana, who both were junior to the petitioner, had worked with the respondent as such upto 31-12-2006. The petitioner, thus, prays for her re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a reply taking preliminary objections regarding lack of maintainability, that the petition was bad on account of delay and laches and for non-joinder of necessary parties. The contents of the petitioner were denied by the respondent on merits. It is asserted that the petitioner had been engaged purely on temporary basis, subject to the availability of work. She was engaged as a daily wager during November, 2001 by the Indo-German Changer Project, Palampur, being administered through Eco Development Society. The respondent is not liable for any acts and deeds of the Eco Development Society/Indo-German Changer Project. No salary/payment was ever made to the petitioner by the department. Before the closure of the project, IGCP Palampur had given a notice to the petitioner alongwith other workers, as envisaged under Section 25-F of the Act. The question of violation of the provisions of Section 25-N of the Act also did not arise at all. Since, the petitioner had never been engaged by the respondent, the question of adjusting other workers by the respondent does not arise. No verbal assurance had ever been given by the respondent to re-engage the petitioner. As there was no relationship of employer and employee, the question of retrenchment of the petitioner by the respondent also did not arise. The petitioner is working as and agriculturist and is gainfully employed. The respondent, thus, prays for the dismissal of the claim.

4. In the rejoinder, the petitioner reiterated the contents of the petition/statement of claim and refuted the objections put forth by the respondent.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 18-10-2017:—

- (1) Whether termination of the services of petitioner by the respondent *w.e.f.* 01-04-2006 is/was illegal and unjustified as alleged? ..*OPP.*
- (2) If issue no.1 is proved in affirmative, to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the claim petition is not maintainable in the present form as alleged? ..*OPR.*
- (4) Whether the claim petition is bad on account of delay and laches as alleged? ..*OPR.*
- (5) Whether the claim petition is bad for non-joinder of necessary party as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Smt. Babita Sharma appeared as PW1 and tendered in evidence her statement by way of affidavit as Ex. PW1/A, copies of letters dated 21-12-2004, 1-1-2009, 15-12-2009, 3-12-2009, 15-2-2006, 29-2-2004, 17-11-2008, 2-1-2014 & 21-9-1994 as Ex. PW1/B to Ex. PW1/J, copy of experience certificate of Shri Shyam Lal as Ex. PW1/K, copies of RTI information dated 4-1-2011, 22-9-2011, 11-9-2014 & 18-9-2014 as Ex. PW1/L to Ex. PW1/M, copy of judgment dated 1-12-2009 as Ex. PW1/N, copy of order dated 28-2-2013 as Ex. PW1/O, copy of RTI information dated 1-1-2014 as Ex. PW1/P, copy of order dated 2-12-2008 as Ex. PW1/Q and copy of RTI dated 14-8-2014 as Ex. PW1/R. The respondent examined one Shri B.S. Yadav as RW1, who tendered his statement by way of affidavit as Ex. RW1/A, copy of list of contractual staff as Ex. RW1/B and copy of agreement as Ex. RW1/C.

7. Arguments of the learned Authorized Representative for the petitioner and the learned Assistant District Attorney for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Yes
Issue No.4	: No
Issue No.5	: Not pressed
Relief.	: Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. Smt. Babita Sharma (petitioner) stepped into the witness box as PW1. In her affidavit Ex.PW1/A submitted under Order 18, Rule 4 of the Code of Civil Procedure, she reiterated on oath the contents of the petition/statement of claim in its entirety.

In the cross-examination, she denied that she had worked in the Indo-German Changer Project, Palampur. Volunteered that, she had never worked in the project, but had worked in the forest department. She denied that she was engaged *w.e.f.* 1.8.2003 in the said project. Volunteered that, she was kept at work in November, 2001. She feigned ignorance that the project was closed *w.e.f.* 31st March, 2006. She also showed her ignorance that the project was a German aided project. She was also not aware that the forest department had no concern with the project. She denied that she was kept on temporary basis in the project. She denied that she had neither been kept nor removed from work by the forest department. She denied that from the year 2005 upto the year 2015, she had not raised the dispute. She admitted that she had raised the demand notice in May, 2015. She categorically denied that they were aware of the fact from before that they would be retained in the project work, till it continued. She admitted that she owns land, which she cultivates. She denied that a false claim has been filed just to take undue benefit.

11. Ex. PW1/B is the copy of letter dated 21-12-2004 regarding adjustment of daily wagers of IGCP Palampur in other department.

12. Ex. PW1/C is the copy of letter dated 1-1-2009 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

13. Ex. PW1/D is the copy of letter dated 15-12-2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWD.

14. Ex. PW1/E is the copy of letter dated 3rd December, 2009 regarding re-engagement of daily waged workers of Indo German Changer Project Palampur and IWDP (Hills) Kandi Area/HP MHWD.

15. Ex. PW1/F is the copy of letter dated 15-2-2006 regarding closure of Indo-German Changer Project Palampur

16. Ex. PW1/G is the copy of letter dated 29-4-2009 regarding appointment of daily waged

drivers- Information under RTI thereof.

17. Ex. PW1/H is the copy of letter dated 17.11.2008 regarding re-engagement of daily waged workers of Indo-German Changer Project Palampur.

18. Ex. PW1/I is the copy of letter dated 2-1-2014 regarding service particulars of Sh. Shushil Kumar under RTI Act, 2005.

19. Ex. PW1/J and Ex. PW1/K are the copies of certificates pertaining to Shri Shyam Lal.

20. Ex. PW1/L is the copy of letter dated 4th January, 2011 regarding information under RTI Act.

21. Ex. PW1/M is the copy of letter dated 22-9-2014 regarding information of filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

22. Ex. PW1/N is the copy of judgment dated 1-12-2009 passed in Suit No.172/2008 by the learned Civil Judge (Sr. Division) Palampur.

23. Ex. PW1/O is the copy of judgment dated 28-2-2013 passed by the learned Additional District Judge-II, Kangra at Dhramshala in Civil Appeal No.271-P/2010.

24. Ex. PW1/P is the copy of service particulars of Shri Sushil Kumar.

25. Ex. PW1/Q is the copy of Award dated 2-12-2008 passed in Reference No.117/2007 by this Court.

26. Ex. PW1/R is the copy of letter dated 14-8-2014, being information regarding filling up of 512 vacant posts of various categories in the establishment of Deputy and office of Divisional Commissioner.

27. Conversely, Shri B.S. Yadav, Divisional Forest Officer, Palampur (respondent) testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he denied that the petitioner had been kept by the department. Volunteered that, she had been kept by Eco Development Society, Palampur/Indo-German Changer Project, Palampur. He also denied that the petitioner had been kept on muster roll. Self stated that, she was kept on agreement. He was not aware as to whether any appointment letter had been issued to the petitioner by Indo-German Changer Project, Palampur. He feigned ignorance that the petitioner had been appointed by the Conservator of Forests and the then Divisional Forest Officer. He denied that the project was under the control of the department. Self stated that the Chairman of the governing body was Secretary Forests. He was categorical that Conservator had been nominated as a Director of the project. He also clearly admitted that when the project was closed, the entire record had been handed over by the society to the Divisional Forest Officer. He also specifically admitted that in that record the appointment letter of the petitioner was not found. He was not aware that at the time of appointment of the petitioner, there was any contract to the effect that as and when the project would be closed, the services of the petitioner would come to an end. He specifically denied that from the time of her appointment upto 31-12-2006, the petitioner had continuously worked for more than 240 days. He admitted that no retrenchment compensation had been paid to the petitioner, as no record in this regard is available. It was also admitted by him that

as per the record Shri Bishan Dass was engaged in the Changer project in the year 1993. It was further admitted by him that a case had been lodged by Shri Bishan Dass in the Court against Director, Changer Project. He also admitted that the petition of the forest department challenging the Award in favour of Shri Bishan Dass was dismissed. Further, he admitted that even the petition of the forest department against the order of the Hon'ble High Court has been dismissed by the Hon'ble Supreme Court. It was also admitted by him that Shri Sushil Kumar has been regularized by the department as per Government policy. He was categorical that Shri Bishan Dass is also working in the department on regular pay scale.

28. Ex. RW1/B is the copy of list of contractual staff of defunct Indo-German Eco-Development project, Palampur. It depicts the name of the petitioner at serial No. 25 and that she had worked on contractual basis for different spells from 01-8-2003 to 31-3-2006.

29. Ex. RW1/C is the copy of Agreement dated 31st December, 2005 executed between the Member Secretary Himachal Pradesh Eco-Development Society, Palampur and Smt. Babita Sharma (petitioner).

30. In the case on hand, it was asserted by the petitioner that she was a workman of the respondent, being appointed on daily wage basis. The respondent denied this fact. Therefore, the onus lay on the petitioner to prove such fact. No document has been placed and exhibited on record by the petitioner to show that she was appointed as a daily waged worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, she ought to have been engaged on the muster rolls. No muster roll has been filed by the petitioner, nor she had called for any such record so as to show that she indeed was a daily paid worker. This only goes to show that she had never been engaged on the muster roll. Then, no seniority list of daily waged workers maintained by the respondent, reflecting her name, has been placed and exhibited on record by the petitioner. Rather, the respondent has tendered in evidence list of contractual staff of defunct Indo-German Eco-Development Project, Palampur as Ex. RW1/B. It reflects the name of the petitioner at serial No. 25. It shows that she had worked as a Food & Monkey Assistant in the project for specified periods on contract basis. Lastly, from 1-12-2005 to 31-3-2006, she had worked on contract basis. Placed on record by the respondent is also a copy of agreement, Ex. RW1/C entered into between the petitioner and the Member Secretary, Himachal Pradesh Eco-Development Society, Palampur. As per this agreement the petitioner was to serve the employer for a specified period of four months *w.e.f.* 1-12-2005 upto 31-03-2006. Admittedly, the period of contractual appointment of the petitioner came to an end on 31-3-2006. Thereafter, the contractual employment of the petitioner was not renewed by the employer, since as per the version of the respondent the Indo-German Changer Project stood closed.

31. Clauses 6 & 7 of the Agreement Ex. Ex. RW1/C postulate as under:

"6. The employment is on purely contract basis and the employee shall not claim for regularization in the organization of employer or any other concern of the central or state govt. at any time.

7. This agreement shall come to an end even before the period of this agreement in the event of the termination of the project or/and termination of the specific work given to the employee by the competent authority and in such eventuality, it shall be presumed that the employer has relieved the employee from her service with one calendar month's notice".

32. In view of the documents Ex. RW1/B and Ex. RW1/C, I am at a loss to understand as to how and on what basis it lies in the mouth of the petitioner to say that her services had been engaged by the respondent on daily wage basis. It is the basic law that non renewal of the term of

the contractual appointment does not fall within the mischief of the word 'retrenchment' as defined in the Act as per clause (bb) of Section 2(oo) of the Act. For these reasons, neither the claim petition is maintainable nor it can be concluded that the respondent has flouted any of the provisions of the Act.

33. Be it stated that the services of the petitioner were not terminated by the respondent as a measure of punishment. The terms of temporary/contractual engagement of the petitioner from time to time *w.e.f.* 01-8-2003 upto 31-3-2006 came to end with the efflux of time.

34. Such being the situation and taking into account the observations made in cases titled as ***State of Rajasthan and Ors. vs. Rameshwar Lal Gahlot, AIR 1996 SC 1001 and Municipal Council, Samrala vs. Raj Kumar (2006) 3 SCC 81***, it is held that the petitioner has no *locus standi* to sue.

35. It appears to me that the avarice of the petitioner to grab the job and money has forced her to file a totally false and baseless claim. No relief can be granted to her.

36. Both these issues are decided against the petitioner and in favour of the respondent.

Issue No. 3:

37. Taking in to account my findings on issues No. 1 and 2 above, it is held that neither the petitioner has the cause of action nor the *locus standi* to sue. The claim petition is not maintainable in the present form. The same is frivolous and vexatious. The claim petition has been instituted by the petitioner with a malafide intention to derive undue advantage(s). This issue is decided in favour of the respondent and against the petitioner.

Issue No. 4:

38. In ***Ajayab Singh vs. Sirhind Co-operative Marketing-cum-Processing Society Limited and Another, (1999) 6 SCC 82***, it has been observed by the Hon'ble Supreme Court that:

"The provisions of Article 137 of Limitation Act, 1963 are not applicable to the proceeding under the ID Act. The relief under the ID Act cannot be denied merely on the ground of delay. The plea of delay if raised by the employer is required to be proved as a matter of fact by showing the real prejudice and not as a merely hypothetical defence. No reference to the Labour Court can be generally questioned on the ground of delay alone".

39. In view of the trite laid down in this ruling, it cannot be said that the petition is hit by the vice of delay and laches. Hence, this issue is decided in favour of the petitioner and against the respondent.

Issue No. 5 :

40. Not pressed.

Relief:

41. In the light of what has been discussed hereinabove, while recording the findings on issues *supra*, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be

consigned to the Record Room.

Announced in the open Court today this 22nd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 562/2016
Date of Institution : 24-8-2016
Date of Decision : 31-07-2019

Shri Jan Mohammad s/o Shri Firoj Deen, r/o Village Nihad, P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. (Now through his legal heirs, namely, Smt. Shumma Bivi (wife), Shakeel Mohammad (son), Shri Mashooq Mohammad (son) and Smt. Margina Bivi (daughter)

..Petitioners.

1. The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P.
2. The Executive Engineer, H.P.P.W.D. Division Jawali, Tehsil Nurpur, District Kangra, H.P.

..Respondents.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioners : Sh. Mukul Vaid, Adv. Vice
For the Respondents : Sh. B.C. Katoch, ADA

AWARD/ORDER

The reference given below has been received from the appropriate Government for adjudication:—

“Whether alleged termination of services of Shri Jan Mohammad s/o Shri Firoj Deen, r/o Village Nihad, P.O. Aundh, Tehsil Nurpur, District Kangra, H.P. during year, 1990 by (1) The Executive Engineer, H.P.P.W.D. Division, Nurpur, Tehsil Nurpur, District Kangra, H.P. (2) The Executive Engineer, H.P.P.W.D. Division, Jawali, Tehsil Nurpur, District Kangra, H.P., who had worked on daily wages and has raised his industrial dispute after more than 20 years *vide* demand notice dated-nil-received on 13-06-2011, without complying the provisions of the Industrial Disputes Act, 1947, as alleged by the workman, is legal and justified? If not, keeping in view of delay of more than 20 years in raising the industrial dispute, what amount of back wages, seniority, past service benefits and compensation the above ex-worker is entitled to from the above employer/management?”

2. The case is listed for appearance of the legal heirs of the deceased petitioner today. Shri Mashooq Mohammad, who is one of the legal heirs of the deceased petitioner, has put in

appearance before this Court today, but, however, he has made the below given statement in the Court today:-

“ब्यान किया कि मैं और मेरा भाई जिसका नाम शकील मुहमद है इस केस को न चलाना चाहते हैं क्योंकि मेरी माता जी की मृत्यु हो चुकी है और मेरी बहन जिसका नाम मर्जिना बीबी है उनकी शादी हो चुकी है वह भी इस केस को न चलाना चाहती है। अतः इस केस न0 562/16 को दाखिल दफ्तर किया जाए। मैं अपने आधार कार्ड की छाया प्रतिलिपि भी संलग्न कर रहा हूँ।”

3. In view of the above statement of the legal heir of the deceased petitioner, this reference is dismissed as withdrawn. Parties to bear their own costs.

4. The reference is answered in the aforesaid terms.

5. A copy of this Order/Award be sent to the appropriate government for further necessary action at its end.

6. File after due completion be consigned to the records.

Announced in the open Court today this 31st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 178/2013
Date of Institution : 30-9-2013
Date of Decision : 31-07-2019

Shri Janak Raj, President, Him Cylinder & Him Alloys Workers Union affiliated with INTUC, Tehsil Amb, District Una, H.P. *..Petitioner.*

Versus

The Factory Manager/Occupier, M/s Him Cylinders Limited, Plot No.1 to 4, Industrial Area Amb, District Una, H.P. (Present Office) *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR.
For the Respondent : None for the respondent

AWARD

The reference given below has been received from the appropriate Government for adjudication: —

“Whether miscellaneous demands raised *vide* demand notice dated 7-5-2012 (copy

enclosed) by Shri Janak Raj, President, Him Cylinder & Him Alloys Workers Union affiliated with INTUC, Tehsil Amb, District Una, H.P. to be fulfilled by the Factory Manager/Occupier, M/S Him Cylinders Limited, Plot No.1 to 4, Industrial area, Amb, District Una, H.P. are legal and justified and maintainable? If yes what relief and benefits the above workers are entitled to from the above Management/Occupier.”

2 In furtherance to the reference, it is averred by the petitioner in the statement of claim that the initial date of appointment of all the workers had been wrongly mentioned in the list just to debar them from claiming seniority, gratuity and compensation benefits under the Industrial Disputes Act, 1947 (hereinafter referred to as ‘the Act’ for short) and other labour legislations. The dates of appointment of all the workers have been recorded by the management from the date of issuance of the identity of cards. So, the dates of appointment as shown in the list prepared by the union be accepted. No deductions from the wages of the workers were being made and no deposits matching the share were made with the Regional Provident Fund Commissioner, Shimla. The management be directed to produce the record with regard to the EPF accounts maintained and sent to the Regional Provident Fund Commissioner, Shimla. The workers working for the past decade or so be designated as semi skilled workers and those working as semi skilled be termed as skilled ones. The pay grade for the skilled and highly skilled workers be given to them. The pay be accordingly paid in the pay grades to all the workers. All the workers working in the factory be provided summer and winter uniforms free of costs along-with shoes, raincoats, umbrella etc., as their clothes get spoiled with oil and they have to bear the washing expenses. The petitioner, thus, prays that the management be directed to accept the demands so raised by the workers.

3. Reply was filed by the respondent taking preliminary objections regarding lack of maintainability, that the reference was bad in the eyes of law as Shri Janak Raj, the petitioner is still working and that similar demands have already been reconciled and conciliation award passed and registered. The contents of the petition were denied on merits. It was asserted that the seniority list was being maintained and is being supplied to the labour department from time to time. All the workers have been issued the identity cards as per the law and seniority. The provident fund has been deducted as per law and account numbers stand allotted by the concerned department. The record has been maintained, which is subject to audit by government machinery. Minimum wages are being paid as per the Payment of Wages Rules framed by the State Government and the workers are drawing the wages accordingly. A single demand was raised before the Labour Inspector, Una and SDM, Amb. It was withdrawn by the worker, being opposed to the Payment of Wages Rules and Employment Standing Orders. Two unions exist in the company and most of the workers belong to Bhartiya Mazdoor Sangh, who have no grudge. True and material facts have been suppressed. The respondent, thus, prays for the dismissal of the claim petition.

4. No rejoinder was filed.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 10-1-2014:—

- (1) Whether the demands raised *vide* demand notice dated 07-5-2012 by the petitioner are legal and justified as alleged? ..*OPP.*
- (2) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (3) Whether the matter has already been reconciled as alleged. If so, its effect? ..*OPR.*
Relief
6. Thereafter, the parties to the lis were directed to adduce evidence in support of the

issues so framed. The petitioner, namely, Shri Janak Raj examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex.PW1/A, copy of list of workers as Ex.PW1/B and copy of notice as Ex.PW1/C. He also examined Shri Sadiq Mohammad (PW2) as his witness.

7. No evidence was led by the respondent, as he had allowed himself to be proceeded against *ex parte* on 14-6-2019.

8. Arguments of the learned Authorized Representative for the petitioner heard and the records gone through.

9. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under: —

Issue No.1	: Negative
Issue No.2	: Affirmative
Issue No.3	: Negative
Relief	: Petition is dismissed as per operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

10. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

11. The petitioner, namely, Shri Janak Raj examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that no approved copy of the general house was attached to show that he was authorized as a president to raise the dispute vide Ex.PW1/C. Further, he admitted that he had not been authorized by the workers to raise the present dispute. His EPF was not deducted from the year 1991. Volunteered that, it was deducted from the year 2004. He cannot produce any record to show that he had been engaged in the year 1991. He was categorical that they were being paid the minimum wages. He also admitted that no copy of membership has been annexed with the reference by the union.

12. PW2 Shri Sadiq Mohammad was also examined, who filed his affidavit in evidence, which is exhibited as Ex. PW2/A. In his affidavit, he also reiterated the contents of the statement of claim. In the cross-examination, he stated that he was not having any document of the proceedings of the union whereby he had been elected as the vice president of the union. He admitted that he was not possessed of any record showing him to be a member and office bearer of the union.

13. Ex.PW1/B is the copy of total number of workers on company's roll.

14. Ex.PW1/C is the copy of demand notice under Section 2-K of the Industrial Disputes Act, 1947 over non-acceptance of the demands of the workers of the Him Cylinders Ltd. Amb.

15. No evidence was led by the respondent, as he had allowed himself to be proceeded against *ex parte*.

16. There is no denial of the fact that Reference No. 176/2013 titled as Shri Janak Raj vs.

The Employer/Factory Manager, M/s Him Cylinders Limited & Anr. was decided by this Court/Tribunal on 28-5-2019. Although, in the present case Shri Janak Raj (PW1) claimed in his substantive evidence that he had been engaged by the respondent in the year 1991 but, however, while deciding the aforesaid reference, it has been held by this Court that Shri Janak Raj had been engaged on 1-1-2004.

17. The statement of claim has been filed by Shri Janak Raj raising miscellaneous demands for the workers from the respondent, claiming himself to be the president of Him Cylinder and Him Alloys Worker Union. Demand notice (Ex.PW1/C) had also been filed by Shri Janak Raj as the president of the aforesaid union. However, Shri Janak Raj (PW1) in his cross-examination admitted that he had not filed any approved copy of the general house to show that he had been authorized as a president to raise the dispute vide demand notice, Ex.PW1/C. He also clearly admitted that he had not been authorized by the workers to raise any such demands. No document has been placed and exhibited on record by the petitioner to show that he had been elected as a president of the aforesaid union and that he had been authorized by the workers of the respondent to raise the alleged demands vide a demand notice. The statement of Shri Sadiq Mohammad (PW2), the other witness examined on record by the petitioner is utterly silent on this aspect that Shri Janak Raj was the president of the union and that he had been authorized by the workers to raise a dispute with the management regarding their demands. In the absence of any such evidence on record, the alleged miscellaneous demands raised vide demand notice Ex.PW1/C cannot be said to be legal, justified and maintainable. It is by now well settled that the admission is the best piece of evidence and the facts admitted need not to be proved. Although, no evidence either oral or documentary has been adduced by the respondent on record, but as already mentioned, the petitioner Shri Janak Raj (PW1) has categorically admitted that he had not been authorized by the workers to raise the dispute. Since, the petitioner has failed to show that he was an office bearer of the union of the workers and that he had been authorized by the workers to raise miscellaneous demands vide demand notice, Ex.PW1/C, by no stretch of imagination it can be said that the present case set up by the petitioner raising the alleged miscellaneous demands for the workers is tenable. Hence, the claim petition is not maintainable in the present form.

18. Issue No.1 is answered in the negative and decided against the petitioner, while issue No.2 is answered in the affirmative and decided in favour of the respondent.

Issue No. 3:

19. No evidence has been led by the respondent to show that the matter stands already reconciled. Hence, this issue is answered in the negative and decided against the respondent.

Relief:

20. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition fails. It is, therefore, dismissed, with no orders as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 31st day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

**IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-
CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)**

Ref No. : 43/2013
Date of Institution : 23-4-2013
Date of Decision : 23-07-2019

Shri Praveen Kumar s/o Shri Bishan Dass, r/o Village Bhavran/Kangrui, Tehsil Amb, District Una, H.P. ..Petitioner.

Versus

The Managing Director, M/s Him Cylinder Ltd., Plot No.1-4, Industrial Area, Amb, Tehsil Amb, District Una, H.P. ..Respondent.

Reference under Section 10 (1) of the Industrial Disputes Act, 1947

For the Petitioner : Sh. R.K. Singh Parmar, AR
For the Respondent : Sh. N.L. Kaundal, AR

AWARD

The reference given below has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Praveen Kumar s/o Sh. Bishan Dass, Village Bhavran/Kangrui, Tehsil Amb, Distt. Una, H.P. by The Managing Director, M/s Him Cylinder Ltd. Plot No.1-4, Industrial Area, Amb, Tehsil Amb, Distt. Una, H.P. during December, 2011 without complying with the provisions of the Industrial Disputes Act, 1947, as alleged by workman, is legal and justified? If not, what amount of back wages, salary, seniority, past service benefits and compensation the above worker is entitled to from the above employer/management?”

2. The case of the petitioner, as it emerges from the statement of claim is that he had worked as a helper with the respondent *w.e.f.* 10-6-2010 upto 20-12-2011. On 6-11-2011 he had made a written request to the Director to issue him identity card and that deduction of EFP be made from his wages. Instead of accepting his demands, he was not allowed to attend the work *w.e.f.* 21-12-2011 orally. Many a times he had approached the management, but without success. He then issued a demand notice. Conciliation was tried by the Conciliation Officer, but the management was adamant to take back the petitioner on work. The petitioner had worked for more than 240 days prior to his termination. No seniority was maintained and persons junior to the petitioner, namely, S/Shri Hem Raj and Harish Kumar were retained and are still working. New/fresh hands, namely, S/Shri Surender Kumar and Jiwan Kumar were engaged on 1-1-2012. No notice was served upon the petitioner, nor one month's wages and compensation were paid to him. The respondent had violated the provisions of Sections 25-F, 25-G and 25-H of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short). The respondent indulge in unfair labour practice. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. A reply was filed by the respondent inter-alia on the ground that the petitioner had only worked for 20 days and as such does not fall within the definition of 'workman'. He had been afforded an opportunity to resume his duties through a written letter, but he did not turn up. The petitioner himself had abandoned the work. He is estopped by the act and conduct to file the

petition. The respondent, thus, prays for the dismissal of the claim petition.

4. While filing the rejoinder, the petitioner controverted the averments made in the replies and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 13-8-2013

(1) Whether the termination of the services of the petitioner by the respondent during the month of December, 2011 is illegal and unjustified as alleged? ..*OPP*.

(2) Whether the relationship of employer and employee/workman exists between the parties as alleged. If so, its effect? ..*OPR*.

Relief

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Praveen Kumar examined himself as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of reply to demand notice as Ex.PW1/B, copy of information under RTI Act, 2005 (8 pages) as Ex.PW1/C. He also examined Shri Sadiq Mohammad (PW2) and Shri Rachhpal (PW3) as his witnesses. The respondent examined one Shri Puran Singh Thakur, as RW1, who tendered his statement by way of affidavit Ex. RW1/A. The respondent also examined one Shri Ranbir Singh, , Labour Inspector, Amb, District Una, H.P. as RW2, who tendered in evidence copy of report under Section 12(4) as Ex.RW2/A and copy of proceedings dated 20-1-2012 to 15-2-2012 and 27-3-2012 as Ex.R1.

7. Arguments of the learned Authorized Representatives for both the parties heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Relief	: Petition is dismissed as per the operative part of the Award.

REASONS FOR FINDINGS

Issues No. 1 and 2:

9. Both these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Praveen Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim.

In the cross-examination, he admitted that he has not placed on record any document suggesting that he had worked from 10-6-2010 to 20-12-2011. Volunteered that, they had a union of which he was a member and had been paying the membership. He denied that he had only worked for 20 days in the company. Self stated that he had worked for one and half years. Thereafter, stated that he had worked for 590 days. He was categorical that he has not placed any record regarding the work for 590 days. He also admitted that letter Ex.PW1/B was issued to him

by the company on 25-12-2011 for his absence from duty. He had received it on 24-1-2012 through registered post. Volunteered that, he had received it after the filing of the case. He had filed a case before Labour Inspector, Amb on 21-12-2011. He specifically admitted that after the receipt of the letter Ex.PW1/D, he had not reported back on duty.

11. PW2 Shri Sadiq Mohammad testified that he alongwith Shri Praveen Kumar had worked in the company for about one and half years. After issuing a demand charter to the management, Shri Praveen Kumar had been disengaged. In the cross-examination, he stated that he cannot produce any document that he had worked with the petitioner for about one and half years. He also cannot produce any record to show that he had worked with the respondent.

12. PW3 Shri Rachhpal in his statement by way of affidavit Ex.PW3/A. Stated that he knows the petitioner, who had worked with him from June, 2010 to 20-12-2011. In the cross-examination, he admitted that he does not have any proof to show that the petitioner had worked with him from June, 2010 till 20-12-2011.

13. Ex.PW1/B is the copy of reply to the demand notice dated 28th March, 2012.

14. Ex.PW1/C is the copy of letter dated 18th March, 2013 regarding information under RTI Act, 2005.

15. Ex.PW3/B is the copy of identity card of Shri Rashpal Singh.

16. Conversely, Shri Puran Singh, General Manager, Him Cylinders Ltd., Plot No.1 to 4, Industrial Area Amb, District Una, H.P. testified as RW1. In his affidavit Ex. RW1/A preferred as per Order 18, Rule 4 CPC, he corroborated on oath the contents of the reply filed by the respondent.

In the cross-examination, he stated that as per their record, the petitioner was engaged in December, 2012 and had worked for only 20 days as a helper. He denied that the petitioner had worked from 10-6-2010 to 20-12-2011. He admitted that the seniority list dated 30-6-2018 (Ex.PX/A) bears his signature in red circle. He denied that no notice had been served upon the petitioner for his not reporting on duty. Volunteered that, he had been asked to resume the duty before the Labour Inspector.

17. RW2 Shri Ranbir Singh, Labour Inspector, Amb has only produced the requisitioned record, i.e. copy of failure report Ex.RW2/A and copy of conciliation proceedings as Ex.R1. He admitted in the cross-examination that he was not having personal knowledge of the case. Volunteered that, he had produced the documents relating to the petitioner.

18. Ex.RW2/A is the copy of report under Section 12(4) of the Act.

19. Ex.RW2/B is the copy of conciliation proceedings dated 20-1-2012 upto 15-2-2012 and 27-3-2012.

20. Ex.PX/A is the copy of seniority list in respect of Administrative/clerical staff as it stood on 30-6-2018.

21. It is an admitted case of the parties that the services of the petitioner were engaged as a helper. The petitioner claimed that he had worked as a helper with the respondent from 10-6-2010 to 20-12-2011. It was a stand taken by the respondent that since the petitioner had only worked for 20 days, he cannot not be termed as a 'workman'. This cannot be accepted. What the Court is required to consider is whether the person was employed in an industry for hire or reward for doing

manual, unskilled, skilled, operational, technical or clerical work in an industry. Once the test of employment for hire or reward for doing the specified type of work is satisfied, the employee would fall within the definition of term 'workman'. For taking this view I am guided by the judgment tendered by the Hon'ble Supreme Court in case titled as ***Devinder Singh vs. Municipal Council Sanaur (2011) 6 SCC, 584***. Since, the engagement of the petitioner as a helper by the respondent, an industry, is not disputed and there is no grain of evidence led on record by the respondent to show that he had not been employed for hire or reward for doing unskilled work, in view of the aforesaid binding precedent, the petitioner is held to be a workman under Section 2(s) of the Act, though he is alleged to have worked for a very short span of time.

22. Now coming to the plea of the petitioner as to whether he had been engaged on 10-6-2010 or not? No doubt the petitioner in his substantive evidence has so claimed and has also examined Shri Sadiq Mohammad (PW2) and Shri Rachhpal (PW3), who both have stated that the petitioner had worked with them for about one and half years but, however, the petitioner has not placed and exhibited on record any document to show that he was initially engaged by the respondent on 10-6-2010. PW2 Shri Sadiq Mohammad while under cross-examination was specific that he could not produce any written proof to show that the petitioner had worked with him for about one and half years. He was also not able to produce any document to show that he was working with the respondent. PW3 Shri Rachhpal also clearly admitted in his cross-examination that he could not any proof to show that the petitioner from June, 2010 upto 20-12-2011 had worked with him. Therefore, in this view of the matter, it cannot be said that the petitioner has been able to prove that he was initially engaged by the respondent on 10-6-2010.

23. The question which now remains to be considered is as to whether in the month of December, 2011 the services of the petitioner were finally terminated by the respondent (as alleged) or not?

24. In the reply, the respondent has specifically pleaded that after working for about 20 days, the petitioner had abandoned the job and had never reported back for duty, despite written letter(s) issued to him. During the cross-examination, the petitioner (PW1) clearly admitted that letter (Ex.PW1/D) had been issued to him by the company on 25-12-2011 for remaining absence from duty. He also specifically admitted that the said letter was received by him through registered post on 24-1-2012. Although, he self stated that it had been received by him after the filing of the case, but he at one point of his cross-examination was categorical that after the issuance of letter (Ex.PW1/D) he had never reported back for duty.

25. There is no denial of the fact that the abandonment of service by a workman is required to be proved like any other fact by the respondent/employer. However, it is equally settled that admission is the best piece of evidence and that facts admitted need not be proved. As per the letter (Ex.PW1/D) the petitioner had been informed by the respondent that he had been absenting himself from duty without any intimation to the management. Vide this letter itself, the petitioner had been asked to report back for duty within a week's time from the date of receipt of this letter. As already mentioned, the petitioner (PW1) has categorically admitted that after the receipt of letter (Ex.PW1/D) he had not reported back for duty. Shri Puran Singh (RW1) in his substantive evidence clearly stated that the petitioner had abandoned the job without any rhyme or reason. Since, the petitioner had abandoned the job of his own accord and free volition, by no stretch of imagination it can be said that his services were terminated by the respondent in contravention of the provisions of the Act.

26. It appears to me that the avarice of the petitioner to grab the job, money and other benefits has forced him to prefer a totally false and baseless claim. He is not entitled to any relief.

27. Hence, issue no.1 is decided against the petitioner and in favour of the respondent,

while issue no. 2 is decided against the respondent and in favour of the petitioner.

Relief:

28. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim being meritless, not maintainable and malafide, fails. It is, therefore, dismissed with costs quantified at `2,000/- (Two thousand only). The reference is answered in the aforesaid terms. A copy of this Award be sent to the appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

IN THE COURT OF SHRI YOGESH JASWAL, PRESIDING JUDGE, LABOUR COURT-CUM-INDUSTRIAL TRIBUNAL, KANGRA AT DHARAMSHALA (H.P.)

Ref No. : 221/2014
Date of Institution : 05.5.2014
Date of Decision : 23.7.2019

Shri Rakesh Kumar s/o Shri Parmi Ram, r/o Village & P.O. Rajpur, Tehsil Palampur, District Kangra, H.P. *..Petitioner.*

Versus

Vice Chancellor/Registrar, Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishav Vidhaylya (CSKHPKV), Palampur, District Kangra, H.P. *..Respondent.*

Reference under Section 10 (1) of the Industrial Disputes Act, 1947.

For the Petitioner : Sh. N.L. Kaundal, AR
For the Respondent : Smt. Rajni Katoch, Adv.
AWARD

The below given reference has been received from the appropriate Government for adjudication:—

“Whether termination of the services of Sh. Rakesh Kumar s/o Sh. Parmi Ram, r/o Village & P.O. Rajpur, Tehsil Palampur, Distt. Kangra, H.P. by the Vice Chancellor/Registrar, CSKHPKV, Palampur, Distt. Kangra, (H.P.) or by the concerned contractor, as alleged by the above employers, during March/April 2010, without following the provisions of the Industrial Disputes Act, 1947, is legal and justified? If not, what amount of back wages, seniority, past service benefits and compensation the above workman is entitled to from the above employer(s)/university?”

2. In furtherance to the reference, it is averred by the petitioner in the statement of claim that his services were engaged by the respondent as a daily waged worker on daily rated basis in Agriculture Engineering department *w.e.f.* March, 2001 and he continued to work as such upto March, 2010 without any breaks. During the aforesaid period the petitioner had worked under the head of the department, his attendance was being marked by field assistant/supervisor, regular employees of the respondent. The payment was made to the petitioner through head of the Plant Breeding department. The act and conduct of the petitioner was satisfactory. During the aforesaid period, no show cause notice had ever been issued to him by the respondent. No appointment letter, identity card, casual/attendance card or wages slip were issued to him at the time of his appointment by the department. In the year 2008 H.P. Krishi Vishvavidalaya Mazdoor Sangh had served a demand notice upon the respondent, raising various demands. The meeting was held on 4.4.2009, which was presided over by the Vice Chancellor. Meeting was also held with the representatives of the union on 18-6-2009, but respondent had not discussed the demands of the workmen. On 25th March, 2010, the HOD/Director Research had verbally asked the petitioner and other co-workmen of the Agriculture Engineering department to join the rolls of the contractor, namely, M/s Sahayta Security Services Pvt. Ltd. The petitioner alongwith others had not filed the application when verbal instructions were issued not to allow him and others to join the services. The services of the petitioner and other co-workmen were unlawfully terminated by the respondent *w.e.f.* March/April, 2010. No show cause notice, charge-sheet had ever been issued to the petitioner, nor any inquiry had been conducted against him. No one month salary in lieu of notice period and retrenchment compensation have been paid. The petitioner had worked continuously and had completed 240 days in each calendar year *w.e.f.* the year 2001 upto 31.3.2010. The petitioner was also a member of the union and reference had been made to this Court vide Reference No.207/2010. During the pendency of this reference, services of the petitioner and about 200 workmen were terminated in different departments. An application under Section 33-A of the Industrial Disputes Act, 1947 (hereinafter referred to as 'the Act' for short) had been filed. However, on 14-7-2011 the Director of Research had offered appointment to the retrenched workers to join the duties in the rolls of the contractor subject to final disposal of reference no.207/2010. It was accepted by the President of the union and application no.25/2011 was withdrawn by the union. Reference no.207/2010 was also withdrawn by the union on technical grounds on 20.3.2014. After termination of the services of the petitioner, he had raised a dispute in individual capacity against the respondent under Section 2-A of the Act. Conciliation proceedings took place before the Labour-cum-Conciliation Officer, Dharamshala, but failed. A failure report under Section 12(4) of the Act had been forwarded to the Labour Commissioner for making a reference. The dispute was then forwarded by the appropriate Government to this Court. In the year 2010-2011 services of M/s Sahayta Security Services had been engaged by the respondent vide an agreement. On the expiry of the contract, new contractor, namely, M/s Sun Security Services Pvt. Ltd. was appointed in the year 2011-2012. On 14-7-2011, the petitioner had joined the services and had worked continuously upto 31-3-2012. After the termination of the contract of M/s Sahayta Security Services, the respondent had adjusted the petitioner alongwith the other workmen in the rolls of new contractor M/s. Sun Security Services Pvt. Ltd. and had worked upto 31-3-2013 continuously. The contract agreement of M/s. Sun Security Services Pvt. Ltd. had been terminated by the respondent *w.e.f.* 31-3-2013 and from 1-4-2013 a new contractor, namely, M/s Nu Vision Shimla was appointed, who is presently working with the respondent. The workmen who were engaged in the rolls of M/s. Sun Security Services Pvt. Ltd. were again adjusted in the rolls of new contractor, M/s. Nu Vision, Shimla. During his services, the petitioner had worked under the control and supervision of project investigator and he had only been making the payment to the petitioner from the year 2007 to 31-3-2010. Thereafter, when the petitioner had worked in the rolls of contractor, namely, M/s Sun Security Services and M/s Nu Vision, Shimla his attendance was marked by the Field Assistant of Agriculture Engineering department from 18-7-2011 upto 11-6-2014. Payment was made by the respondent to the contractor on the basis of attendance records of its Field Assistant. As per the statute persons could not be employed on daily rated basis

or on contract basis. The services of Smt. Promila Devi had been engaged as a worker without any appointment letter for 89 days *w.e.f.* 22-1-2000 on contract basis and her services have been regularized as a clerk by the respondent since 2010. When the respondent had engaged the contractor, namely, M/s Sahayta Securities Services Pvt. Ltd., it had not moved an application for registration of the establishment under Section 7 of the Contract Labour (Regulation & Abolition) Act, 1970. M/s Sahayata Security Services Pvt. Ltd. had also not applied for a licence to Licensing Authority under Section 12(1) of the Act. Without complying with the provisions, no principal employer could engage a contract labourer. Workmen whose services had been engaged by the respondent without any appointment letter had worked for various operations in the field work of university. They had been discharging the same work and nature of duties as those of regular employees of the university. They have been paid minimum wages as fixed by the State Government/Labour Department but the service conditions of the petitioner had been changed by the respondent from time to time without making any application. The act and conduct of the respondent was highly unjustified, arbitrary, contrary, unconstitutional and against the mandatory provisions of the Act. The petitioner, thus, prays for his re-engagement with all consequential benefits.

3. On notice, the respondent appeared. He filed a detailed reply controverting the averments made in the petition/statement of claim. Preliminary objections regarding lack of maintainability, locus standi, jurisdiction, that the petitioner had never worked as a daily paid labourer with the respondent and that the petitioner had not approached the Court with clean hands and had suppressed the material facts, have been taken. The contents of the petition were denied on merits. It was asserted that as per policy of the Government of H.P. of Finance Department vide order No. FIN.1-C(14)-1/83 dated 8.7.1998, the policy/system to engage the worker on muster roll basis stood banned. The petitioner was never engaged as a daily paid labourer on muster roll basis. He was engaged on individual work contract basis during the year 2001, for which he had been raising bills for the work performed and had been paid at the rate not below the Government rate by the Project Investigators of the Project/HOD. His wages were paid from the funds of the project funded by ICAR/GOI and no wages had ever been paid to him from the Grant-in-Aid of the university. Had the petitioner been engaged as a daily paid labourer on muster roll basis, his name would have figured in the seniority lists of daily paid labourers of the university circulated in 2006 and 2008. The activities carried out by the respondent are purely of scientific research nature and do not have a motive of gain or profit. The petitioner had never worked against any sanctioned post in the university. The tender to outsource the workers was floated by the department of Soil Science of the respondent university and tender of M/s. Sahayata Security Services was approved. The services of the labourers/workers were outsourced to the said agency. Prior to it work was got done from unregistered contractors. It is specifically denied that the petitioner had never been allowed to enter the premises of the department by the HOD and his services had been unlawfully terminated. The worker had not turned to seek work from the respondent university at his own will. He had worked as a contractor and raised bills for the month of May, 2008. The head of department had not violated any provisions of the Act. The petitioner himself had refused to work under the registered contractor during the year 2010. He only began to work under the registered contractor after interim order dated 14-7-2011 passed by this Court. The Director of Research of the respondent had not offered any appointment to any of the workers. Reference No. 207/2010 was dismissed as withdrawn. It had been instituted by using false registration number, which had been issued to Himachal Pradesh Krishi Vishvavidyalaya Dhiadidar Mazdoor Sangh. Registered contractors, namely, M/s. Sahayata Security Services, M/s. Sun Securities Services Pvt. Ltd. and M/s. Nuvision had been hired by the university for outsourcing of labour for various works related with research and scientific purposes. The deployment had been made for seasonal work, as per the requirement of the work. The petitioner had been deployed in various adhoc projects as per the requirement of the project work. The HOD concerned used to verify the work done, monthly attendance and wages bill by the Contractor/individual concerned, to see that excess payments were

not made. At present the petitioner is working under the contractor *i.e.* outsourcing agency, namely, M/s. Nuvision Commercial & Escort. The petitioner had been paid from recurring contingencies sub head and on the termination of one project, he had worked in other similar projects from time to time. He is not a regular employee of the university. It is admitted that Smt. Promila Devi had initially been appointed as a Data Entry Operator on contractual basis and that her services were regularized as per the policy of the Government of Himachal Pradesh to regularize contract appointees. The case of the petitioner has no direct connection/resemblance with that of Smt. Promila Devi. The respondent had got itself registered with the competent authority and M/s. Sahayata Security was having a registration license. In the absence of regular staff, the manpower is being outsourced through the approved registered contractor to carry out field operations and in lieu of the services of outsourced, the payment is made to the contractor at the rate of minimum wages fixed by the State Government with respect to each category of workers. The petitioner is not entitled for salary and benefits at par with regular employees. The respondent, thus, prays for the dismissal of the claim.

4. While filing the rejoinder, the petitioner controverted the averments made in the reply and reiterated those in the statement of claim.

5. Out of the pleadings of the parties, the following issues were settled for determination and adjudication by this Court *vide* order dated 22-4-2015: —

- (1) Whether termination of services of the petitioner by the respondent *w.e.f.* March/April, 2010 is/was improper and unjustified as alleged? ..*OPP.*
- (2) If issue No.1 is proved in affirmative to what service benefits the petitioner is entitled to? ..*OPP.*
- (3) Whether the petitioner is/was daily paid worker of the respondent as alleged. If so, its effect? ..*OPR.*
- (4) Whether the petitioner has no locus standi to file the case as alleged? ..*OPR.*
- (5) Whether this court has no jurisdiction to file the present case as alleged? ..*OPR.*
- (6) Whether the claim petition is not maintainable in the present form? ..*OPR.*
- (7) Whether the petitioner has no cause of action to file the present case as alleged? ..*OPR.*
- (8) Whether the petitioner has not approached the Court with clean hands as alleged? ..*OPR.*
- (9) Whether the petitioner has suppressed the true and material facts from the Court as alleged? ..*OPR.*

Relief.

6. Thereafter, the parties to the lis were directed to adduce evidence in support of the issues so framed. The petitioner, namely, Shri Rakesh Kumar appeared as PW1 and tendered in evidence his statement by way of affidavit Ex. PW1/A, copy of letter dated 5-7-2010 as Ex. PW1/B, copy of letter dated 8-7-1998 as Ex. PW1/C, copy of notification dated 13-11-1998 as Ex. PW1/D, copy of office order dated 17-2-1999 as Ex. PW1/E, copy of notification dated 26-4-1999 as Ex. PW1/F, copy of letter dated 4-9-1986 as Ex. PW1/G, copy of statues of university Mark-A,

copy of proceedings dated 4-4-2009 as Ex. PW1/H, copy of agreement deed as Ex. PW1/I and copy of office order dated 19-7-2010 as Ex. PW1/J. The petitioner also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2, who tendered in evidence copies of certificates of registration as Ex. PW2/A and Ex. PW2/B. The respondent examined one Shri Rajinder Singh Jamwal as RW1, who tendered his statement by way of affidavit Ex. RW1/A, copy of office order dated 27-11-2017 as Ex. RW1/B, copy of statutes as Ex. RW1/B1, copy of letter dated 31-5-2010 as Ex. RW1/B2, copy of Notification dated 13-11-1998 as Ex. RW1/C, copies of bill vouchers as Ex. RW1/D to Ex. RW1/I6, copy of award dated 30-6-2014 as Ex. RW1/J, copy of order dated 20-3-2014 as Ex. RW1/K, copy of letter dated 29-1-2011 as Ex. RW1/L, copy of certificate of registration as Ex. RW1/M, copy of license of M/s Sahayta Security as Ex. RW1/N, copy of license of M/s Sun Security dated 27-7-2011 as Ex. RW1/O, copy of contract license dated 16-7-2014 as Ex. RW1/P, copies of agreements dated 30-8-2010, 31-3-2011, 30-3-2012, 18-6-2013, 31-3-2015, 12-5-2015 as Ex. RW1/Q to Ex. RW1/V, copy of extract for I.D. Act Mark-X, copy of statutes of CSKHPKVV, Palampur as Ex. RW1/W.

7. Arguments of the learned Authorized Representative for the petitioner and learned counsel for the respondent heard and records gone through.

8. For the reasons to be recorded hereinafter while discussing the issues for determination, my findings thereon are as under:—

Issue No.1	: Negative
Issue No.2	: Negative
Issue No.3	: Decided accordingly
Issue No.4	: Yes
Issue No.5	: Not pressed
Issue No.6	: Yes
Issue No.7	: Yes
Issue No.8	: Yes
Issue No.9	: Yes
Relief	: Petition is dismissed per operative part of the Award.

REASONS FOR FINDINGS

Issues No.1 to 3:

9. All these issues are intrinsically connected with each other and required common appreciation of evidence, hence are taken together for the purpose of determination and adjudication.

10. The petitioner, namely, Shri Rakesh Kumar examined himself as PW1 and filed his affidavit in evidence, which is exhibited as Ex. PW1/A. In his affidavit, he reiterated the contents of his statement of claim. He also filed certain documents purportedly in support of his claim, which are exhibited as Ex. PW1/B to Ex. PW1/J.

In the cross-examination, he admitted that he has not filed any document showing him to be a daily wager. He also admitted that in the muster roll names of different categories of workers are mentioned. He further admitted that a tentative seniority list Ex. R1 was issued by the university. Further, he admitted that it does not bear his name. He also specifically admitted that his name also does not figure in the final seniority list, Ex. R-2. Though, he denied that he had not raised any objection regarding the seniority list and has volunteered to state that he had raised an objection with the VC, but he had to admit that no such document has been placed on record by him. It was also admitted by him that as per the policy of the Government, the persons who were engaged on muster rolls have been regularized. He clearly admitted his signatures on Mark-RA-1 to Mark-RA-12 (now as Ex. RW1/D to Ex. RW1/I6). He is working in the department on contingency. He denied that he is making a phoney statement.

11. The petitioner has also examined one Shri Raj Kumar Sharma, Labour Officer, Dharamshala, District Kangra, H.P. as PW2 who proved on record copies of certificates of registration of M/s. Sahayta Security Services and M/s Sun Security Services as Ex. PW2/A and Ex. PW2/B respectively.

In the cross-examination, he denied that the university was only an educational, scientific, research and training institute. Volunteered that, the license which had been issued was for keeping seasonal workers in agriculture farms.

12. Ex. PW1/B is the copy of certificate relating to Smt. Promila Devi.

13. Ex. PW1/C is the copy of letter dated 8th July, 1998 regarding need for economy without impeding the pace of development –Economy instructions.

14. Ex. PW1/D is the copy of notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur.

15. Ex. PW1/E is the copy of office order dated 17-2-1999 issued by Comptroller, HPKV, Palampur.

16. Ex. PW1/F is the copy of notification dated 26-4-1999 issued by Comptroller, HPKV, Palampur.

17. Ex. PW1/G is the copy of letter dated 4-9-1986 regarding maintenance of casual registers/casual cards of daily rated workmen-Deployment and termination of such workmen.

18. Ex. PW1/H is the copy of proceedings of the meeting held between the representatives of Bhartiya Mazdoor Sangh of Kangra Unit and representatives of University's Majdoor Sangh.

19. Ex. PW1/I is the Agreement Deed dated 30th day of August, 2010 executed between the respondent and M/s. Sahayta Security Services Pvt. Ltd.

20. Ex. PW1/J is the copy of office order dated 19th July, 2010 issued by Registrar, CSK, HPKV, Palampur.

21. Ex. PW2/A is the copy of certificate of registration dated 29-1-2011.

22. Ex. PW2/B is the copy of certificate of registration dated 27-7-2011.

23. Conversely, Shri Rajender Singh Jamwal, Director of Research CSK, HPKV, Palampur, District Kangra, H.P. (respondent) testified as RW1. In his affidavit Ex. RW1/A filed as per Order 18, Rule 4 of the Code of Civil Procedure, he corroborated on oath the contents of reply filed by the respondent.

In the cross-examination, he admitted that the petitioner was kept at work in the year 2001. Volunteered that, after the year 2010 the workers had been kept on outsource basis. Thereafter stated that earlier to it workers had been kept through unregistered contractors. The department was not marking the presence of the petitioner, it was being marked by the unregistered contractor and the department would verify it. He admitted that the work was being allotted by the HOD to the petitioner. Bills of the workers were being produced by the contractor. He specifically denied that the services of the petitioner had been terminated by the university. He admitted that no mandays chart of the petitioner has been given by the department. Volunteered that, he was not a daily paid labourer, so the mandays chart was not being maintained. Seniority list of contractual casual workers is not being prepared. He clearly denied that from the year 2001 upto the year 2010, the petitioner had worked for 240 days in each year and that his mandays chart was not intentionally filed. He also denied that he was not competent to give evidence.

24. Ex. RW1/B is the copy of office order dated 27-11-2017 issued by the Registrar, CSK HPKV Palampur.

25. Ex. RW1/B1 is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidyalaya, Palampur.

26. Ex. RW1/B2 is the copy of letter dated 31st May, 2010 regarding outsourcing of service issued by Deputy Registrar (Admn.), CSK HPKV, Palampur.

27. Ex. RW1/C is the copy of notification dated 13-11-1998 issued by the Comptroller, HPKV, Palampur.

28. Ex. RW1/D to Ex. RW1/I6 are the copies of contingent bills relating to the petitioner and others.

29. Ex. RW1/J is the copy of the Award dated 30-6-2014 passed in Reference No.124/2011 by this Court.

30. Ex. RW1/K is the copy of order dated 20-3-2014 passed in Reference no.207/2010 by this Court.

31. Ex. RW1/L is the copy of letter dated 29-1-2011 regarding registration of establishment.

32. Ex. RW1/M is the copy of certificate of registration dated 29-1-2011 relating to M/s Sahayata Security Services.

33. Ex. RW1/N is the copy of certificate of registration relating to M/s. Sahayata Security.

34. Ex. RW1/O is the copy of certificate of registration dated 27-7-2011, which corresponds to Ex. PW2/B.

35. Ex. RW1/P is the copy of certificate of registration dated 16-7-2014 relating to M/s. Nu Vision Commercial Escorts Services.

36. Ex. RW1/Q is the copy of Agreement Deed dated 30th August, 2010 executed between the CSK, HPKV Palampur and M/s Sahayta Security Services, Pvt. Ltd.

37. Ex. RW1/R is the copy of Agreement Deed dated 31-3-2011 executed between CSK, HPKV, Palampur and M/s Sun Security Services.

38. Ex. RW1/S is the copy of Agreement Deed dated 30-3-2012 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

39. Ex. RW1/T is the copy of Agreement Deed dated 18-6-2013 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

40. Ex. RW1/U is the copy of Agreement Deed dated 31-3-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

41. Ex. RW1/V is the copy of Agreement Deed dated 12-5-2015 executed between CSK, HPKV, Palampur and M/s Nuvision Commercial & Escort Services.

42. Ex. RW1/W is the copy of statutes of Chaudhary Sarwan Kumar Himachal Pradesh Vishvavidyalaya, Palampur.

43. Ex. R1 is the copy of letter dated 4-10-2007 regarding tentative seniority list of daily waged workers/Mess workers as it stood on 31-3-2006.

44. Ex. R2 is the copy of letter dated 25th May, 2009 regarding seniority list of daily waged workers/Mess Helpers as it stood on 31-3-2008.

45. The first question, which arises for consideration, as per the arguments, is whether the petitioner was an employee of respondent or not. It is by now well settled that the burden of proof is on the workman to establish the employer-employee relationship. In **Workmen of Nilgiri Coop. Maktg. Soc. Ltd. vs. State of Tamil Nadu, (2004) 3 SCC 514**, it has been laid down by the Hon'ble Supreme Court that it is a well settled principle of law that the person who sets up a plea of existence of relationship of employer and employee, the burden would be upon him. It was also observed therein that where a person asserts that he was a workman of the company, and it is denied by the company, it is for him to prove the fact. It is not for the company to prove that he was not an employee of the company but of some other person.

46. In the case on hand, it was asserted by the petitioner that he was a workman of the respondent, being appointed on daily waged basis. The respondent denied this fact and claimed that the petitioner had worked on contract basis, for which he had been raising bills and had been paid at the rate not below the Government rate. Therefore, in view of the aforesaid binding precedent, the onus lay on the petitioner to prove the employer-employee relationship in between himself and the respondent. No document has been placed and exhibited on record by the petitioner to show that he was appointed as a daily waged worker by the respondent. Rather, the respondent in the cross-examination of the petitioner itself has placed on record revised seniority list of daily paid workers in the university, as it stood on 31-3-2006 as Ex. R-1 and the seniority list of daily waged workers in the university, as it stood on 31-3-2008 as Ex.R-2. These documents are not in dispute by the petitioner. The name of the petitioner does not figure in them anywhere. While under cross-examination, the petitioner categorically admitted that his name did not find mention in these seniority lists. No reason has been assigned by him as to why his name does not figure in the seniority lists of daily paid workers maintained by the respondent. Although, he claimed that an objection had been raised before the Vice Chancellor, but his such self serving statement is in air,

as no document regarding the raising of objection against the seniority lists has seen the light of the day. The petitioner clearly admitted that he had not filed any such document on record. It has come in the substantive evidence of the respondent that the seniority list contains the names of all the daily waged workers working with it. Then, the petitioner himself clearly admitted his signatures to be there on contingent bills, Ex. RW1/D to Ex. RW1/I6. These are bills/lists through which payments were made to the petitioner. It was also clearly admitted by the petitioner that he was working in the department on contingency. Rule 1.4 of the Statutes of Chaudhary Sarwan Kumar Himachal Pradesh Krishi Vishvavidalya, Palampur, which defines the term “employees”, excludes part-time employees and those paid from the contingencies. This admission on the part of the petitioner and the aforesaid bills/lists, knock the very bottom of the case set up by him that he was engaged as a daily paid worker by the respondent. Had it been that the petitioner was a daily paid worker of the respondent, he ought to have been engaged on the muster rolls. No muster roll in his name has been placed and exhibited on record by the petitioner. This only goes to show that he had never been engaged on the muster roll. Further, the payment records Ex. RW1/D to Ex. RW1/I6, nowhere reflect that the petitioner was a daily paid worker. He had signed the documents, being contingent bills. At this stage, it is apt to mention here that a complete ban had been imposed by the State Government for filling up of vacant posts even by engaging daily paid labourers. Reference in this regard can be made to the copy of letter dated 8th July, 1998 as Ex. PW1/C. It is also evident from the notification dated 13-11-1998 issued by Comptroller, HPKV, Palampur, copy of which is Ex. PW1/D, that in future no daily paid labourer would be appointed/engaged by the university. However, for the emergent seasonal requirement or any other exigency, the university was authorized to formulate its own modalities for contractual system. Subsequently, vide office order dated 17-2-1999, copy of which is Ex. PW1/E, the respondent on the basis of the recommendations had formulated the modalities only for engagement of labour on contractual basis for emergent seasonal requirement or any other inevitable exigencies. Then, how it lies in the mouth of the petitioner to say that he was appointed or engaged in the year 2001 as a daily paid worker. In view of the admissions made by the petitioner, as discussed above, and also taking into account the aforesaid documentary evidence, it can safely be held that the petitioner has failed to establish on record that he was engaged as a daily paid worker by the respondent.

47. Next, it was claimed by the petitioner that he had worked continuously with the respondent from the year 2001 upto March, 2010, without any breaks. No such record has seen the light of the day. Be it recorded here at the risk of repetition that had the services of the petitioner been engaged as a daily paid worker by the respondent, his name ought to have figured in the seniority list maintained by the respondent. But, so is not the case here. Then, if the petitioner was a daily paid worker muster rolls must have been issued in his name. No muster roll has been filed by the petitioner, nor he had called for any such record so as to show that he indeed was a daily paid worker. The bills, as discussed above, on the other hand belie the case of the petitioner that he had been engaged by the respondent as a daily paid worker. For proving that the petitioner was a ‘workman’ and as such entitled for protection under the Act, it was required to be proved on his part that as provided under Section 25-B of the Act, he had continuously worked for a period of 240 days in a calendar year. Having failed to establish on record that he had worked as a daily paid worker with the respondent and in the absence of there being any evidence to the effect that he had continuously worked for a period of 240 days in a calendar year, his submission in this regard is negated. In case titled as ***Range Forest Officer vs. S.T. Hadimani 2002 SCC (L&S) 367***, it has been laid down by the Hon’ble Supreme Court that filing of an affidavit is only his own statement in his favour and that cannot be regarded as sufficient evidence for any Court or Tribunal to come to the conclusion that the workman had, in fact, worked for 240 days in a year. No proof of receipt of salary or wages for 240 days or order or record of appointment or engagement for this period was produced by the workman.

48. In all fairness, the learned Authorized Representative for the petitioner has placed reliance upon cases titled as ***Central Bank of India vs. S. Satyam and Ors. 1996 SCC (L&S) 1273***;

State of Himachal Pradesh and others vs. Bhatag Ram and Anr. Latest HLJ 2007 (HP) 903 and Basanti Devi and others vs. State of Jharkhand and Ors. 2009 (122) FLR 172. I have carefully gone through the aforesaid case law cited by the learned Authorized Representative for the petitioner and I am of the view that for the reasons mentioned hereinabove, the petitioner cannot derive any advantage from what has been decided in these cases.

49. Reliance was also placed upon cases titled as ***Bhilwara Dugdh Utpadak Sahakari Sangh Limited vs. Vinod Kumar Sharma (Dead) by L.Rs and Ors. 2011 (131) FLR 759 and Chet Ram vs. Presiding Officer, Industrial Tribunal-cum-Labour Court-1, 2010 LLR 1165***, where in the question of engagement of the labour from licensed/unlicensed contractors and the effect of the provisions of the Contract Labour (Regulation and Abolition) Act, 1970 has been dealt with. Since, there is no reference received from the appropriate Government under the provisions of the aforesaid Act, this Court is to confine its findings only with regard to alleged illegal termination. Even otherwise, the petitioner has nowhere pleaded nor proved that he had been appointed through a licensed/unlicensed contractor, so that he could be considered to be an employee of the employer directly, instead of that of the contractor. Therefore, the aforesaid case law is also of no help to the petitioner in the case on hand.

50. Reference was also made by the petitioner to the cases titled as ***Goa M.R.F. Employees' Union vs. ICARUS Foods and Farm and Others, 2015 LLR 974***, wherein it has been held that where in discharge of a statutory obligation of maintaining a canteen in any establishment, the principal employer avails the services of a contractor, the contract labour would indeed be the employees of the principal employer. The petitioner has also referred to case titled as ***Hindalco Industries Ltd. vs. Association of Engineering Workers , 2008 LLR 509***, wherein it has been held that though a canteen was run by the contractor but ultimate control and supervision has been by the company, the workmen are in fact workmen of the management. It is nowhere the case of the petitioner that he had been working for a long time continuously without any breaks in service through different contractors from time to time, under the control and supervision of the respondent, so he cannot be considered to be an employee of the principal employer. Then, this matter is also not in dispute in this reference. So, the aforesaid case law is also not applicable to the facts of the present case.

51. In view of the ocular and documentary evidence, as discussed above, it can safely be concluded that the petitioner has not been able to show that he was engaged as a daily paid worker by the respondent. No muster roll was prepared regarding his work, nor his name figured in the seniority list of daily paid workers maintained by the respondent. There is no document on record to show that the petitioner had challenged or objected to the seniority list, which did not show his name as a daily paid worker. Therefore, the petitioner is not a daily paid worker. But, having worked under contingency, he is not entitled to any relief as claimed for by him. Hence, issues no.1 and 2 are answered in the negative and are decided against the petitioner, while issue no.3 is decided accordingly.

Issues No. 4, 6 to 9:

52. Taking in to account my findings on issues No. 1 to 3 above, it is held that neither the petitioner has the cause of action nor the locus standi to sue. The claim petition is not maintainable in the present form. The petitioner has not approached the Court with clean hands and has suppressed material facts. The claim petition is frivolous and vexatious. It has been instituted by the petitioner with a malafide intention to derive undue advantage(s). These issues are answered in the affirmative and are decided in favour of the respondent.

Issue No. 5:

53. Not pressed.

Relief:

54. In the light of what has been discussed hereinabove, while recording the findings on issues supra, the present claim petition merits dismissal and is accordingly dismissed, with no order as to costs. The reference is answered in the aforesaid terms. A copy of this Award be sent to the

appropriate Government for publication in the official gazette and the file after due completion be consigned to the Record Room.

Announced in the open Court today this 23rd day of July, 2019.

Sd/-
(YOGESH JASWAL),
Presiding Judge,
Labour Court-cum-Industrial Tribunal,
Kangra at Dharamshala, H.P.

गृह विभाग
अधिसूचना

शिमला-2, 17 जून, 2020

संख्या: गृह-सी(ए)3-1/2020.—हिमाचल प्रदेश के राज्यपाल, मानव अधिकार संरक्षण अधिनियम, 1993 (1994 का 10) की धारा 26 के साथ पठित धारा 41 की उपधारा (1) और उप-धारा (2) के खंड (क) द्वारा प्रदत्त शक्तियों का प्रयोग करते हुए निम्नलिखित नियम बनाते हैं, अर्थात् :-

1. **संक्षिप्त नाम और प्रारंभ.**—(1) इन नियमों का संक्षिप्त नाम हिमाचल प्रदेश मानव अधिकार आयोग (अध्यक्ष और सदस्यों के वेतन, भत्ते और सेवा के अन्य निबंधन और शर्तों) नियम, 2020 है।

(2) ये नियम राजपत्र (ई-गज़ट), हिमाचल प्रदेश में प्रकाशन की तारीख से प्रवृत्त होंगे।

2. **परिभाषाएं.**—(1) इन नियमों में, जब तक कि संदर्भ से अन्यथा अपेक्षित न हो,—

(क) “अधिनियम” से मानव अधिकार अधिनियम, 1993 (1994 का 10) अभिप्रेत है;

(ख) “अध्यक्ष” से अधिनियम की धारा 22 के अधीन नियुक्त हिमाचल प्रदेश मानव अधिकार आयोग का अध्यक्ष अभिप्रेत है;

(ग) “आयोग” से अधिनियम की धारा 21 के अधीन गठित हिमाचल प्रदेश मानव अधिकार आयोग अभिप्रेत है;

(घ) “सदस्यों” से अधिनियम की धारा 22 के अधीन नियुक्त हिमाचल प्रदेश मानव अधिकार आयोग के सदस्य अभिप्रेत हैं; और

(ङ) “राज्य” से हिमाचल प्रदेश राज्य अभिप्रेत है।

(2) उन समस्त अन्य शब्दों और पदों के, जो इन नियमों में प्रयुक्त हैं किन्तु परिभाषित नहीं हैं, वही अर्थ होंगे जो अधिनियम में क्रमशः उनके हैं।

3. **मुख्यालय.**—हिमाचल प्रदेश मानव अधिकार आयोग का मुख्यालय शिमला में होगा।

4. **वेतन.**—(1) (क) अध्यक्ष को, उसकी पेंशन को घटाकर, अन्तिम आहरित वेतन के समान वेतन संदत्त किया जाएगा।

(ख) सदस्य (जो उच्च न्यायालय का न्यायाधीश या जिला न्यायाधीश है या रहा है) को, उसकी पेंशन को घटाकर, अन्तिम आहरित वेतन के समान वेतन संदत्त किया जाएगा :

परन्तु यदि उच्च न्यायालय के किसी आसीन न्यायाधीश या जिला न्यायाधीश को सदस्य के रूप में नियुक्त किया जाता है, तो इस नियम में अंतर्विष्ट किसी बात के होते हुए भी, हिमाचल प्रदेश उच्च न्यायालय के न्यायाधीश या जिला न्यायाधीश को वेतन और भत्तों के सम्बन्ध में लागू नियम उसको उसकी अधिवर्षिता की तारीख तक लागू होंगे और तत्पश्चात् उसको इस नियम के उपबंध लागू होंगे;

(2) कोई व्यक्ति, जो आयोग के सदस्य के रूप में उसकी नियुक्ति की तारीख को मानवाधिकार से सम्बन्धित मामलों में ज्ञान या व्यावहारिक अनुभव रखता है, उसका मानदेय ₹ 1000/- प्रति बैठक होगा और वह केवल बैठकों के लिए ही वाहन भत्ते का हकदार होगा।

5. **यात्रा भत्ते और दैनिक भत्ते.**—(1) अध्यक्ष, प्रवास (जिसके अंतर्गत उसकी आयोग में कार्यग्रहण करने के लिए की गई यात्रा या आयोग में उसकी पदावधि के अवसान पर उसके गृह नगर को प्रस्थान यात्रा भी है) के दौरान यात्रा भत्ते, वैयक्तिक चीजबस्त के परिवहन हेतु भत्ते और अन्य समरूप मामलों के लिए उन्हीं मापमानों और दरों का हकदार होगा, जो उच्च न्यायालय के मुख्य न्यायमूर्ति/न्यायाधीश को अनुज्ञेय है।

(2) सदस्य प्रवास (जिसके अंतर्गत उसकी आयोग में कार्यग्रहण करने के लिए की गई यात्रा या आयोग में उसकी पदावधि के अवसान पर उसके गृह नगर को प्रस्थान यात्रा भी है) के दौरान निम्नलिखित के लिए हकदार होंगे:—

(क) यात्रा भत्ते, वैयक्तिक चीजबस्त के परिवहन हेतु भत्ते और अन्य समरूप मामलों के लिए उन्हीं मापमानों और उन्हीं दरों पर जो, यथास्थिति, किसी न्यायाधीश या सचिव, हिमाचल प्रदेश सरकार को अनुज्ञेय है; और

(ख) दैनिक भत्ता, उन्हीं दरों पर जो, यथास्थिति, किसी न्यायाधीश या सचिव, हिमाचल प्रदेश सरकार को अनुज्ञेय है।

6. **सेवा की अन्य शर्तें.**—किरायामुक्त आवास, वाहन सुविधाओं, चिकित्सा सुविधाओं के उपबंधों (मानवाधिकारों से सम्बंधित मामलों का ज्ञान या व्यावहारिक अनुभव रखने वाले आयोग के सदस्य के सिवाय) से सम्बंधित सेवा की शर्तों और सेवा की ऐसी अन्य शर्तें जो तत्समय—

(1) उच्च न्यायालय के मुख्य न्यायमूर्ति/न्यायाधीश को लागू हैं, जहां तक हो सके, अध्यक्ष को लागू होंगी; और

(2) किसी न्यायाधीश/सचिव, हिमाचल प्रदेश सरकार को लागू हैं, जहां तक हो सके, सदस्यों को लागू होंगे।

आदेश द्वारा,
हस्ताक्षरित /—
(मनोज कुमार),
अतिरिक्त सचिव (गृह)।

HOME DEPARTMENT

NOTIFICATION

Shimla, the 17th June, 2020

No. Home-C(A)3-1/2020.—In exercise of the powers conferred by sub-section (1) and clause (a) of sub-section (2) of section 41 read with section 26 of the Protection of Human Rights Act, 1993 (No.10 of 1994), the Governor of Himachal Pradesh, is pleased to make the following rules, namely :—

1. Short title and commencement.—(1) These rules may be called the “Himachal Pradesh Human Rights Commission (Salaries, Allowances and other Terms and Conditions of Service of Chairperson and Members) Rules, 2020.

(2) These Rules shall come into force from the date of their publication in the Rajpatra (e-gazette), Himachal Pradesh.

2. Definition.—(1) In these rules, unless the context otherwise requires, :

(a) "Act" means the Protection of Human Rights Act, 1993 (Central Act 10 of 1994);

(b) "Chairperson" means the Chairperson of the Himachal Pradesh Human Rights Commission appointed under Section 22 of the Act;

(c) "Commission" means the Himachal Pradesh Human Rights Commission constituted under Section 21 of the Act;

(d) "Members" mean the members of the Himachal Pradesh Human Rights Commission appointed under Section 22 of the Act; and

(e) "State" means the State of Himachal Pradesh.

(2) All other words and expressions used but not defined in these rules, shall have the same meanings respectively as assigned to them in the Act.

3. Headquarter.—The Headquarter of the Himachal Pradesh Human Rights Commission shall be at Shimla.

4. Salary.—(1) (a) The Chairperson shall be paid salary equal to last pay drawn minus pension.

(b) Member (who is or has been a judge of High Court or a District judge) shall be paid salary equal to last pay drawn minus pension:

Provided that if a sitting Judge of the High Court or District Judge is appointed as member, then, notwithstanding anything contained in this rule, the rules regarding pay and allowances applicable to a Judge of the H.P. High Court or a District Judge shall be applicable to him till the date of his superannuation and thereafter the provisions of this rule shall apply to him:

(2) A person, who, on the date of his appointment as a Member of the Commission having knowledge or practical experience in the matter relating to human rights, his honorarium shall be `1000/- per sitting and will be entitled for conveyance allowance only for sittings.

5. Traveling Allowances And Daily Allowances.—(1) While on tour (including the journey undertaken to join the Commission or on the expiry of his term with the Commission to proceed to his home town) the Chairperson shall be entitled to travelling allowance, allowances for transportation of personal effects, daily allowance and other similar matters at the same scales and at the same rates as are admissible to the Chief Justice/ judge of a High Court.

(2) While on tour (including the journey undertaken to join the Commission or on the expiry of his term with the Commission to proceed to his home town) the Members shall be entitled to:—

(a) Travelling allowance, allowances for transportation of personal effects and other similar matters at the same scales and at the same rates as are admissible to a judge/ Secretary to the Government of Himachal Pradesh, as the case may be, and

(b) Daily allowance at the same rates as are admissible to judge/ Secretary to the Government of Himachal Pradesh, as the case may be.

6. Other Conditions of Service.—The conditions of service relating to provisions (except for a Member of the Commission having knowledge or practical experience in the matter relating to human rights) of rent free accommodation, conveyance facilities, medical facilities and such other conditions of service as are for the time being applicable to—

(1) The Chief Justice/ Judge of High Court shall, so far as may be, apply to the Chairperson; and

(2) A judge/Secretary to the Government of Himachal Pradesh, so far as may be, applies to the members.

By order,

Sd/-

(MANOJ KUMAR)

Addl. Chief Secretary (Home).